A

MEGA FOREST PLANTATION MANAGEMENT SDN BHD v. PENGARAH PERHUTANAN NEGERI SELANGOR & ORS

COURT OF APPEAL, PUTRAJAYA
MARY LIM JCA
HAS ZANAH MEHAT JCA
B S NANTHA BALAN JCA
[CIVIL APPEAL NO: B-01(A)-682-12-2018]
23 JUNE 2020

C ***ADMINISTRATIVE LAW:*** *Judicial review – Application for – Applicant and corporation set up and established company to carry out reforestation project – Company wound up – Director of Perhutanan Negeri Selangor issued notice for applicant to vacate land – Application to quash notice and for order directing valuation of 'assets' on land for purpose of determining compensation payable to applicant – Whether applicant entitled to claim compensation as contributory/* D *shareholder of company – Whether applicant had locus standi – Whether compensation sought through judicial review application already claimed in previous suit – Whether res judicata prohibited judicial review application – Rules of Court 2012, O. 53 r. 2(4)*

E In 1998, the Government of the State of Selangor ('State') ('third respondent'), announced its intention to commercialise the planting of Sentang and Jati trees. The appellant and Perbadanan Kemajuan Pertanian Selangor ('PKPS') entered into a joint venture to undertake the reforestation project for the planting of Sentang trees. For this purpose, Megafores Nursery Sdn Bhd ('MNSB') was set up and incorporated where the appellant and F PKPS each held 51% and 49% shares, respectively. Pursuant to a lease and concession agreement, the State granted a lease of 5,000 hectares from the land gazetted as permanent forest reserve ('land') for a period of 60 years to PKPS to undertake and commence reforestation. PKPS was given the approval to replace the existing *acacia mangium* trees with, *inter alia*, Sentang, G Jati and rubber trees ('reforestation plan'). PKSP then entered into (i) a joint venture agreement ('JVA') with the appellant to jointly undertake the reforestation plan; and (ii) a sub-lease agreement ('SLA') with MNSB where MNSB was to undertake the reforestation plan. The appellant, a mere shareholder of MNSB, was not a party to the SLA. However, in 2002, the State decided to take back 43.68 hectares of the sub-leased land and directed H PKPS to propose a compensation sum to be paid to MNSB. PKPS filed a petition, at the High Court, to wind up MNSB. The High Court held, *inter alia*, that: (i) the incorporation of MNSB, with PKPS as a shareholder, was illegal as the prior consent of the Ministry of Finance had not been obtained; (ii) the participation of PKPS, a corporation, was contrary to para. 14(1) of I Second Schedule to the Incorporation (State Legislatures Competency) Act 1962; and (iii) the JVA was unenforceable as it was tainted with illegality. MNSB was subsequently wound up. The appellant claimed for damages

against PKPS, at the High Court, for misrepresentation, breach of contract and/or breach of statutory duty ('Suit 514'). PKPS, in turn, counterclaimed against the appellant and the appellant's directors for conspiracy to injure PKPS' interest. The High Court dismissed Suit 514 and PKPS' counterclaim. Meanwhile, Jabatan Perhutanan Selangor, Daerah Hulu Selangor issued a notice for the removal of the trees planted on part of the sub-leased land. The Director of Perhutanan Negeri Selangor ('first respondent'), by way of a letter, demanded that the appellant vacate the sub-leased land ('notice'). The appellant argued that the funding for the planting of the Sentang trees on the sub-leased land came from the appellant and the respondents' decision had the effect of evicting the appellant without adequate compensation being paid for the loss of these Sentang trees and other trees. The appellant commenced judicial review proceedings against the respondents, at the High Court, seeking (i) to quash the notice; (ii) a *mandamus* order directing a valuation of the 'assets' on the sub-leased land to be undertaken for purposes of determining the compensation to be paid by the respondents; and (iii) a declaration that the appellant was entitled to claim compensation as the contributory/shareholder of MNSB. The judicial review application was dismissed. Hence, the present appeal.

Held (dismissing appeal)
Per S Nantha Balan JCA delivering the judgment of the court:

(1) The real matters and grievance of the appellant, as raised in the judicial review application, were matters which ought to and could have been raised 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. *Res judicata*, in the wider sense, applied to prohibit the judicial review application. (paras 79 & 80)

(2) The appellant was asserting its rights as a shareholder of MNSB (in liquidation) in circumstances where that right could only be taken up under the terms of s. 486(2) of the Companies Act 2016. The appellant had no interest in the sub-leased land. The entity which had a direct legal interest in the sub-leased land, and by extension the Sentang trees, was MNSB. The appellant, being a shareholder of MNSB, had no legal interest in the assets of MNSB. The principle that shareholders have no legal interest in the assets of the company in which shares are held, is trite. The right to sue for the asset laid with MNSB. Therefore, 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. (paras 81-83, 85 & 86)

(3) It was for the liquidator of MNSB to take any action as he thinks fit. It was 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. It was open to the appellant, as the shareholder of MNSB, to challenge the liquidator's decision to re-deliver possession of the sub-leased land to the State. However, the appellant appeared not willing to challenge the liquidator's decision in that regard. (paras 87, 89 & 91)

Case(s) referred to:

GPQ Sdn Bhd v. Constant View Sdn Bhd [2017] 1 LNS 821 CA ***(refd)***

Liputan Simfoni Sdn Bhd v. Pembangunan Orkid Desa Sdn Bhd [2019] 1 CLJ 183 FC ***(refd)***

Macaura v. Northern Assurance Co Ltd [1925] AC 619 ***(refd)***

Malaysian Trade Union Congress & Ors v. Menteri Tenaga, Air Dan Komunikasi & Anor [2014] 2 CLJ 525 FC ***(refd)***

Mega Forest Plantation Management Sdn Bhd lwn. Perbadanan Kemajuan Pertanian Negeri Selangor [2014] 1 LNS 753 HC ***(refd)***

Patel v. Mirza [2017] 1 All ER 191 ***(refd)***

Perbadanan Kemajuan Pertanian Selangor v. Megafores Nursery Sdn Bhd & Ors [2011] 8 CLJ 484 HC ***(refd)***

Pioneer Haven Sdn Bhd v. Ho Hup Construction Company Bhd & Anor And Other Appeals [2012] 5 CLJ 169 CA ***(refd)***

Syarikat Sebati Sdn Bhd v. Pengarah Jabatan Perhutanan & Anor [2019] 3 CLJ 157 FC ***(refd)***

Tan Poh Yee v. Tan Boon Thien & Other Appeals [2017] 3 CLJ 569 CA ***(refd)***

Legislation referred to:

Companies Act 1965 (repealed), s. 218(1)(f), (i)

Companies Act 2016, s. 486(2)

Contracts Act 1950, s. 24(a), (b)

Federal Constitution, art. 13

Incorporation (State Legislatures Competency) Act 1962, Second Schedule para. 14(1)

National Forestry Act 1984, s. 14

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

Selangor Agricultural Development Corporation Enactment 1972, ss. 12(1), 14B(1)

For the appellant - Hizri Hasshan, Muhammad Akram Abdul Aziz; M/s Akram Hizri Azad & Azmir

For the respondents - Masri Mohd Daud, Siti Fatimah Talib & Nik Haizie Azlin Nabidin; SLAs

[Editor's note: Appeal from High Court, Shah Alam; No: B-01(A)-682-12-2018 (affirmed)].

Reported by Najib Tamby

JUDGMENT

S Nantha Balan JCA:

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 1972 (No 12 of 1972) ("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, para. 14(1) of Second Schedule to 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-65-2010, 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 para. 14 of Second Schedule to 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 sub-leased to MNSB. According 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. 24-74-2011, but this was struck out on 18 June 2015. It ought to be mentioned that MFPSB 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 sub-leased land within 30 days from the date of the letter ("the impugned letter").

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

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

(ii) 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

(iii) a declaration that the appellant is entitled to claim compensation as the contributory/shareholder of MNSB (sub-lessee).

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 sub-lease 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 sub-lease 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 sub-leased 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 sub-leased 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 para. 14(1) of Second Schedule to the 1962 Act.

[23] PKPS filed a petition to wind-up MNSB *via* Kuala Lumpur High Court Petition for Winding Up No. 28NCC-65-2010. The winding-up petition was predicated on s. 218(1)(f) and (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* [2011] 8 CLJ 484; [2010] MLJU 1572; [2010] AMEJ 0373; [2010] 3 MLRH 688 HC.

[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 1st 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.
>
> 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 1st respondent and to hold 49% of its shareholding. The incorporation of the 1st 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 1st 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 1st respondent.

....

6.3 Issue 3 – Whether The JVA Is Valid

6.3.1 It will be noted that the 1st respondent was incorporated on 30 September 2000, which is about five months before the petitioner entered into the JVA with the 2nd 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 2nd respondent to enter into the JVA to carry out the Reforestation Plan through the 1st respondent.

6.3.2 Since it is the finding of the court that the incorporation of the 1st respondent is illegal, I am of the view that the JVA, although entered into between the petitioner and the 2nd respondent (and not with the 1st 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-514-2011 ("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;

(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 HC.

[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 sub-leased 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 -74-2011 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 sub-leased 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 MFPSB 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, pihak 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 sub-leased land.

[33] The impugned letter reads as follows:

13 Disember 2017

Tetuan Akram Hizri & Azad
Suite 9.03, Level 9, Wisma Zelan
No. 1, Jalan Tasik Permaisuri 2
Bandar Tun Razak
56000 KUALA LUMPUR

Tuan,

Penyelesaian Damai Bagi Mengambil Alih Projek Pemulihan Penghutanan Semula Tanaman Sentang 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 sub-leased 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 tanaman 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 sub-leased 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 4.4.2011. 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 & Another Appeal* [2017] 3 CLJ 569; [2017] 3 MLJ 244; Contracts Act 1950; *GPQ Sdn Bhd v. Constant View Sdn Bhd* [2017] 1 LNS 821; [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, section 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 of any forest produce from a permanent reserved forest would require a licence or permit issued by the relevant authority, which in this case would be the 1st 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:

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

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

(iii) 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;

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

(v) that the respondents' order to vacate the sub-leased 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;

(vi) 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

(vii) 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 sub-leased 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 sub-leased 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 sub-leased area. The Sentang trees are now ready to be harvested and are estimated to have a commercial value of RM600 per tonne metric.

[41] The appellant contends that in 2009 they took a loan of RM5.2 million 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 sub-leased 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 sub-leased 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 sub-leased 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**.
>
> (emphasis added)

[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] 1 CLJ 183; [2019] 4 MLJ 141; [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 *Syarikat Sebati Sdn Bhd v. Pengarah Jabatan Perhutanan & Anor* [2019] 3 CLJ 157; [2019] 2 MLJ 689; [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.*
>
> ...

A [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 added)

[51] On the issue of *locus standi*, it was submitted for the appellant that they B 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 and 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.

C **[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] 2 CLJ D 525; [2014] 3 MLJ 145; [2014] MLJU 92; [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 & Other Appeals* [2017] 3 CLJ 569; [2017] 3 MLJ 244; [2018] 2 MLRA 514 CA and the case of *GPQ Sdn Bhd v. Constant View Sdn Bhd* [2017] 1 LNS 821; [2017] 6 MLJ E 728; [2017] 4 MLRA 483; [2017] AMEJ 0689 CA on the issue of *locus standi* and held that the appellant lacked the requisite *locus standi.*

[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 sub-leased land. The appellant filed this action to protect its interest F in the land particularly all the Sentang trees planted over 1,400 acres of the sub-leased land.

[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 G property when the appellant was the one who bore all the costs and expenses for the plantation of Sentang trees.

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

[57] Counsel for the appellant reiterated that the appellant is the one who H 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.

[58] According to counsel, the appellant is still obligated to settle the loan I sum of RM5.2 million 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.

[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 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:

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.**

(emphasis added)

[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 sub-leased 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 RM4 million to be paid for a partial take-over of the sub-leased land. A valuation report had been prepared. Hence, a precedent had already been set. The

A 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 B 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 C 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.

[67] The learned State Legal Advisor (representing the respondents) argued D 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:

> 24. The consideration or object of an agreement is lawful, unless:
>
> E (a) it is forbidden by a law;
>
> (b) it is of such a nature that, if permitted, it would defeat any law;

[68] It was submitted that the appellant has no direct interest in the sub-leased 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 sub-lease to F MNSB. The sub-leased was not granted to the appellant.

[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. G

[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.

[71] It was contended that the respondents are not liable to undertake any H 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.

[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 I to pay any compensation to the appellant as the land and everything thereupon belonged to the State per s. 14 of the Act. Section 14 of the Act 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. (emphasis added)

[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 ("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 sub-leased 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 para. 14(1) of Second Schedule to the 1962 Act. The High Court also found that the sub-stratum 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:

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

(ii) 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 sub-leased land.

[78] The judicial review herein seeks to quash the notice (per the impugned letter) to vacate the sub-leased land which was issued by first respondent and also a *mandamus* directing a valuation of the "assets" on the sub-leased 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 sub-leased land and that the entity which has a direct legal interest in the sub-leased land, and by extension the Sentang trees 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 Company Bhd & Anor And Other Appeals* [2012] 5 CLJ 169; [2012] 3 MLJ 616 CA, where the Court of Appeal (per Zainun Ali JCA as she then was) enunciated:

> [146] 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] 3 CLJ 355). (emphasis added)

[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 sub-leased 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-à-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 sub-leased 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 sub-leased 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.