SPICON PRODUCTS SDN BHD

v.

TENAGA NASIONAL BERHAD & ANOR

Federal Court, Putrajaya
Mohd Zawawi Salleh, Zabariah Mohd Yusof, Mary Lim Thiam Suan, Harmindar Singh Dhaliwal, Rhodzariah Bujang FCJJ
[Federal Court No: 01(i)-5-03-2020(M)]
4 March 2022

Civil Procedure: *Parties — Intervention — Whether landowner who had, without any objection, accepted award of compensation made by Land Administrator, nevertheless entitled to intervene and participate in land reference proceedings initiated by another interested party who had objected to that award — Rules of Court 2012, O 15 r 6 — Federal Constitution, art 13(1) — Land Acquisition Act 1960, ss 2, 10, 11, 12, 13, 37(1), 45(2), 55*

Land Law: *Acquisition of land — Land reference proceedings — Intervention — Whether landowner who had, without any objection, accepted award of compensation made by Land Administrator, nevertheless entitled to intervene and participate in land reference proceedings initiated by another interested party who had objected to that award — Rules of Court 2012, O 15 r 6 – Federal Constitution, art 13(1) — Land Acquisition Act 1960, ss 2, 10, 11, 12, 13, 37(1), 45(2), 55*

The single poser in this appeal was whether a landowner who had, without any objection, accepted an award of compensation made by the Land Administrator, was nevertheless entitled to intervene and participate in land reference proceedings initiated by another interested party, namely, the 'paymaster' (the 1st respondent in this appeal) who had objected to that award of the Land Administrator. The landowner, who was the appellant in this appeal, invoked the procedural options of intervention and joinder under O 15 of the Rules of Court 2012 ("ROC") in order to partake in the land reference proceedings. The application was allowed by the High Court. On appeal, this order was set aside on the basis that such procedure amounted to an abuse of the court's process, that the appellant was obliged to file Form N, as provided under the Land Acquisition Act 1960 ("Act 486").

Held (allowing the appeal):

(1) Article 13(1) of the Federal Constitution ("FC") guaranteed that no person would be deprived of property save in accordance with law. In the reading and application of this guarantee, there must be a propensity to safeguard as opposed to denying that guarantee. Unless and until there were clear express provisions restricting a right of participation in any exercise to deprive property, any relevant law must be read to allow, if not encourage, such participation.

The adequacy of any compensation paid for the deprivation might otherwise be compromised. (para 40)

(2) From the provisions of ss 10, 11, 12, 13 and 55 of Act 486, as well as from the contents of Form E, it would appear that the category of persons who could attend the enquiry was fairly extensive. Certain persons should be served with notice in Form E to attend the enquiry, namely the occupier of the land, registered proprietor of the land, any person having a registered interest in such land; and any person that the Land Administrator knew or had reason to believe to be interested in the land to be acquired. All these persons were easily within the definition of "person interested" in s 2 which read as including "every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will". This phrase of "person interested" was used quite liberally throughout the Act, sometimes as "interested person" (s 12(2)), "persons interested", or "person whom he knows or has reason to believe to be interested therein" (s 11(1)(d)); and must thus be given a contextual and not literal meaning. Besides the appellant, who was the landowner, the 1st respondent would be such person interested who would attend an enquiry. Both the appellant and the 1st respondent in this appeal attended and participated at the enquiry. (paras 46-48)

(3) It was obvious that the appellant was not entitled to lodge any objection as it did not fulfil the requirements of s 37(1) for lodging an objection. Both parties accepted this position. Although the appellant had made a claim to the Land Administrator in due time, the appellant accepted the award without any reservation. Clearly, the appellant did not qualify nor was the appellant entitled to lodge an objection under s 37(1). Thus, to insist that the appellant lodge an objection when it had no objection and, worse, when it did not fall within the category of persons qualified to file such an objection was really a non-starter. Consequently, the decision of the Court of Appeal that the appellant was obliged to lodge Form N in order to participate in the reference proceedings at the High Court was plainly in error. (paras 68-69)

(4) Given how references were more in the character of a contested originating process, that there were parties to the reference, that the reference was on an objection which related ultimately to the matter of determining the question of adequacy of compensation under art 13 of the FC, the landowner obviously and rightly had an interest to be added as a party and to appear at the reference proceedings. Intervention for this purpose was far from converting the appellant from a person who had accepted the award without protest and who had no objections to the award, to a person who now objected to the award. The landowner's appearance and participation at the reference proceedings was consistent with its rights and interests under art 13 of the FC, and the construction and interpretation of Act 486 should always have that as a forefront consideration. In fact, its participation was consonant with the rules of natural justice and would assist the Court in its determination of the

objection lodged. None of the provisions within Act 486, whether expressed or by necessary inference, provided for the exclusion of a landowner who had accepted the award without objection to participate at any land reference proceedings. Consequently, a landowner whose land stood acquired and whose interests were undeniably affected by an objection referred to the High Court, was indeed entitled to invoke O 15 r 6 of the ROC. Such a landowner as the appellant herein was entitled to apply to intervene and participate in the reference proceedings in order to protect its rights and interests. (paras 83, 84 & 91)

(5) This court was not advocating that the scheme of Act 486 allowed a complete wholesale adoption and application of the ROC without more. Section 45(2) clearly allowed its application so long as those rules were not inconsistent with the provisions in Act 486. Allowing the complementary role of the rules of procedure did not mean that the whole acquisition process from enquiry to final award would become delayed or protracted. What was actually of greater importance was the issue of the rights of persons interested to be heard in that whole acquisition process, whether at the enquiry or at the reference proceedings before the High Court. There should be no injustice caused to any person interested in the name of speedy disposal. This court, in fact, could not see how the application to intervene by a person interested in the acquisition, and it could not be denied at all that the appellant landowner here was such a person, would delay the acquisition process or even cause it to be protracted. The object of these hearings was to determine the adequacy of compensation by reason of compulsory acquisition and the identity of persons interested. The construction and interpretation of Act 486 should always have that consideration in mind. (para 117)

(6) For all these reasons, the answer to the issue posed must clearly be in the affirmative as the appellant's interests, as the landowner, would surely be affected by the eventual outcome of such reference proceedings. (para 123)

Case(s) referred to:

Arab Malaysian Merchant Bank Bhd v. Jamaludin Mohd Jarjis [1991] 1 MLRA 104 (refd)

Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia [2010] 2 MLRA 403 (refd)

Collector Of Land Revenue v. Alagappa Chettiar And Collector Of Land Revenue v. Ong Thye Eng And Cross Appeals [1968] 1 MLRA 696 (not folld)

Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia [2014] MLRAU 371 (folld)

Delhi Development Authority v. Bhola Nath Sharma [2011] 2 MLJ 255 (refd)

Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd [2009] 4 MLRA 125 (distd)

Lembaga Lebuhraya Malaysia v. Pentadbir Tanah Daerah Kelang [2019] MLRHU 204 (refd)

Lembaga Lebuhraya Malaysia v. Semenyih Jaya Sdn Bhd [2010] 3 MLRA 553 (distd)

Magasu Sundram T Magasu & Ors v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur [2003] 1 MLRH 204 (refd)

Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor [1995] 2 MLRA 49 (refd)

Neelagangabai v. State of Karnataka [1990] 3 SCC 617 (refd)

Neyvely Lignite Corporation Ltd v. Special Tahsilar AIR 1995 SC 1004 (refd)

Ng Kam Loon & Ors v. Director Of Public Works Department Johore & Anor [1990] 5 MLRH 50 (refd)

Pegang Mining Company Ltd v. Choong Sam & Ors [1968] 1 MLRA 925 (refd)

Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd [2017] 5 MLRA 633 (refd)

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 4 MLRA 554 (refd)

Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor & Other Appeals [2010] 5 MLRA 286 (refd)

Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor [2009] 1 MLRA 674 (folld)

Tenaga Nasional Berhad v. Chew Thai Kay & Anor [2022] 2 MLRA 178 (folld)

Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor And Other Appeals [2017] MLRAU 547 (not folld)

Legislation referred to:

Federal Constitution, art 13(1)

Land Acquisition Act 1960, ss 2, 10, s 11(1)(d), 12(1), (2), 13, 35, 36(1), (2), 37(1)(a), (d), (2), (3), 38(1), (2), (3), (5), (7) of Act 486, 40, 40A, 40B, 40C, 40D, 41, 42, 43(c), 44(1), (2), 45(1)(a), (2), 53, 55, Part VII, First Schedule, Second Schedule, Third Schedule, Form E, Form H, Form N, Form O, Form P

Rules of Court 2012, O 15 r 6(2)(b)

Rules of the High Court 1980, O 15 r 6(2)(b)(i)

Counsel:

For the appellant: Kee Tong Kiak (Helena Koh Pei Yan with him); M/s Chee Siah Lee Kee & Partners

For the 1st respondent: Steven Thiru (David Mathew, David Ng Yew Kiat & Ananthan Moorthi with him); M/s Steven Thiru & Sudhar Partnership

For the 2nd respondent: Mazuin Hashim; State Legal Advisor

JUDGMENT

Mary Lim Thiam Suan FCJ:

[1] My learned brothers and sisters in this panel have read this judgment in draft and they have agreed to the draft *in toto*. This is the unanimous decision of this Court.

[2] The single poser in this appeal is whether a landowner who has, without any objection, accepted an award of compensation made by the Land Administrator is nevertheless entitled to intervene and participate in land reference proceedings initiated by another interested party, namely the 'paymaster' who had objected to that award of the Land Administrator. This issue is of utmost importance and relevance to the proper conduct of land reference proceedings.

[3] The landowner who is the appellant in this appeal invoked the procedural options of intervention and joinder under O 15 of the Rules of Court 2012 in order to partake in the land reference proceedings. The application was allowed by the High Court. On appeal, this order was set aside on the basis that such procedure amounted to an abuse of the Court's process, that the appellant was obliged to file Form N, as provided under the Land Acquisition Act 1960 [Act 486].

Relevant Facts

[4] The appellant is the registered proprietor of land held under Lot No 7770, Mukim of Kelemak, District of Alor Gajah, Melaka [scheduled land]. The scheduled land was acquired for the 1st respondent [TNB] for the purpose of constructing its main substation. Pursuant to s 12 of Act 486, the Land Administrator conducted an enquiry. Form E dated 30 March 2018 was issued to the appellant informing of the date of enquiry.

[5] After due enquiry, the Land Administrator awarded the appellant RM467,154.22 [see Form H dated 13 June 2018] comprising:

a. compensation for the scheduled land (@RM250.00 per square metre)	RM272,000.00
b. incidental costs [interest on loan]	RM192,654.22
c. valuer's fees	RM 2,500.00
Total award	**RM467,154.22**

[6] Upon receipt of this award on 2 July 2018, the appellant accepted the award without any objection. It, therefore did not file any Form N. TNB, on the other hand objected to the award, specifically on the 'incidental costs'. It lodged its objection vide Form N on 7 August 2018.

[7] The Land Administrator referred TNB's objection to the High Court vide Form O. In the land reference, TNB and the Land Administrator were respectively cited as applicant and respondent. The appellant was however, not cited as a party although Form O identified the appellant as "... a person interested in the land".

[8] The appellant decided to intervene in the Land Reference, invoking O 15 r 6(2)(b) of the Rules of Court 2012 and/or inherent jurisdiction of the Court - see encl 4. The appellant explained that it ought to be allowed to intervene because as landowner of the subject land acquired for TNB's purposes, and as recipient of the compensation paid for such acquisition, it would be prejudiced by any reduction of compensation [apa-apa pengurangan dalam kos sampingan akan menjejaskan Pencelah yang dicadangkan].

[9] In the affidavit filed in support, the appellant added that it ought to be made a party in order to protect its rights and interests [supaya dapat menjaga kepentingan dan hak Pencelah yang dicadangkan]; that it is important for the administration of fair justice and for the just disposal of the matter [mustahak bagi pentadbiran kehakiman yang adil dan penentuan tindakan ini secara adil].

[10] The application was opposed with TNB citing abuse of the process prescribed under Act 486; that the filing of Form N was a "compulsory statutory Form N" and the only mode available under Act 486 for any interested person to be a party in the land reference; that the appellant's non-filing of Form N was fatal and precluded the appellant from taking part in the land reference proceedings.

[11] TNB further took the position that any interest of the appellant is "sufficiently safeguarded by the respondent"; that it was for the Land Administrator to defend the award [adalah bagi responden untuk membela Awad berkenaan dan sehubungan ini, kesahan "Faedah Pinjaman" yang berjumlah sebanyak RM192,654.22].

Decision Of The High Court

[12] After examining ss 37(1) and 38(1) of Act 486, the learned Judge agreed with the appellant, holding that these provisions did not compel a person such as the appellant to file Form N where it had no objections to the award. The learned Judge also did not find the non-filing of Form N as fatal since it was not the appellant who was dissatisfied with the award; that only a party objecting to an award is required to file Form N. Finally, the High Court decided that the appellant ought to be allowed to intervene in order to protect its interests which may be adversely affected.

Decision Of The Court Of Appeal

[13] At the Court of Appeal, TNB canvassed 3 issues, all pertaining to the matter of whether the appellant must file Form N in order to take part in the land reference proceedings. TNB's argument was that the application to

intervene under O 15 r 6(2)(b) of the Rules of Court 2012 was an abuse of Court process.

[14] The Court of Appeal agreed with TNB. The Court of Appeal found:

i. the application to intervene pursuant to O 15 r 6(2)(b) of the Rules of Court 2012 was "in the overall scheme and context of the Land Acquisition Act, to be inappropriate and would amount to an abuse of the Court's process" as "it circumvents the provisions of the Land Acquisition Act 1960";

ii. Order 15 r 6(2)(b) of the Rules of Court 2012 "is not applicable in land reference proceedings";

iii. it is trite law that the lodging of Form N is essential if a party wishes to be a party to a land reference proceeding;

iv. the filing of Form N is the most appropriate and the only mode available under the Land Acquisition Act 1960 to any person interested under the Land Acquisition Act 1960 to become a party in a Land Reference at the High Court;

v. resorting to O 15 r 6(2)(b) of the Rules of the High Court 1980 was an abuse of process.

[15] The Court of Appeal further opined that the appellant's interests "is sufficiently safeguarded" by the Land Administrator who is to "defend the award". And, as declared by the Privy Council in *Collector Of Land Revenue v. Alagappa Chettiar And Collector Of Land Revenue v. Ong Thye Eng And Cross Appeals* [1968] 1 MLRA 696, the Land Administrator "was fully entitled to lead such evidence as he considered necessary to do so".

[16] The Court of Appeal cited two of its earlier decisions in support - *Sistem Lingkaran Lebuhraya Kajang Sdn Bhd v. Inch Kenneth Kajang Rubber Ltd & Anor & Other Appeals* [2010] 5 MLRA 286 [*Inch Kenneth Kajang*] and *Lembaga Lebuhraya Malaysia v. Semenyih Jaya Sdn Bhd* [2010] 3 MLRA 553. The decision in *Inch Kenneth Kajang* was said to have been subsequently endorsed by the Federal Court in *Tenaga Nasional Bhd v. Unggul Tangkas Sdn Bhd & Anor And Other Appeals* [2017] MLRAU 547 [*Unggul Tangkas*].

Summary Of Submissions

[17] Learned counsel for the appellant contended that the issue of whether the only available mode open to a landowner such as the appellant to participate in land reference proceedings at the High Court was to file Form N requires a proper appreciation of the earlier decisions of both the Court of Appeal and the Federal Court in this regard.

[18] When those cases are properly understood, the position is as follows. First, as a landowner, the appellant is always entitled to participate in the

land reference proceedings by reason of art 13 of the Federal Constitution. A landowner is also entitled to personally defend the award and ought to be a party in land reference proceedings. Second, the position is different where it is the paymaster who wants to object or take part in any land reference proceedings. In such a situation, it is the Land Administrator who will defend the award as the paymaster has no legal interest in the legal reference proceedings; it is concerned only with the outcome at the High Court which may "adversely affect its pocket".

[19] In short, the Federal Court's remarks in *Unggul Tangkas* on the resort to O 15 as being an abuse of process of Court was not of general application but is confined to the context where the application to intervene is made by a paymaster. In *Unggul Tangkas*, the application to intervene was by TNB, a party who had no legal interest in the land reference proceedings, was not claiming any compensation and was not entitled to receive any compensation but had "at the highest only a pecuniary interest". Which is why the application to intervene using O 15 r 6(2)(b) of the Rules of Court 2012 was quite rightly disallowed. To construe otherwise and not limit the decision in *Unggul Tangkas* to the peculiar facts would, it was further suggested, give the principle too broad an application and which would be inconsistent with the scheme of Act 486.

[20] On the scheme of Act 486, learned counsel submitted that although the Act refers to the inclusion or involvement of "persons interested" in the three critical stages of the acquisition process, that term takes different meanings or has different connotations, depending on the stage under consideration. The three stages being the enquiry, the award and finally the land reference.

[21] At the enquiry held pursuant to s 12, the Land Administrator is obliged to enquire into the value of the scheduled land and assess the appropriate amount of compensation. The Land Administrator is also required to enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation and to hear all objections lodged by any interested person as to the area of any scheduled land. The appellant accepts that at this first stage, the respondent may attend the enquiry in view of the wide terms of s 11(1). Section 11 deals with services of notices of the impending enquiry.

[22] However, the same cannot be said of the next stage where only a limited number of persons may object to the award made by the Land Administrator. According to the appellant, s 37(1) limits the persons who may refer the award to Court down to interested persons in any scheduled land who have made a claim to the Land Administrator in due time and who have either not accepted the Land Administrator's award or who have accepted payment of the amount of such award under protest as to the sufficiency thereof.

[23] Even then, the objection to the award may only be in respect of the matters spelt out in s 37(1), that is, on the measurement of the land, amount of compensation, persons to whom the compensation is payable, and the apportionment of the compensation. Where the total amount of any award

exceeds RM30,000.00, any Government or any person or corporation on whose behalf such land was acquired or being occupied or used "shall be deemed to be a person interested and may make objections on any of the grounds" mentioned in s 37(1)(a) to (d).

[24] Although s 37(3) deems the Government or any person or corporation on whose behalf land was acquired, occupied or used, as "a person interested" and who may then make objections on any of the grounds specified in s 37(1), the appellant's stand is that TNB nevertheless does not fall within that category.

[25] To start with, TNB did not suffer a loss by reason of the acquisition as decided by the Federal Court in *Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd* [2017] 5 MLRA 633. Further, an acquisition for a public purpose rules out the involvement of any other person or corporation on whose behalf the scheduled land is acquired – see the Court of Appeal's decision in *Menteri Besar Negeri Sembilan (Pemerbadanan) v. Pentadbir Tanah Daerah Seremban & Anor* [1995] 2 MLRA 49. Although the Federal Court in *Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia* [2010] 2 MLRA 403 had agreed with the view taken at the Court of Appeal that a paymaster should be construed as "person interested", the appellant maintained its stand that TNB is still not entitled to file Form N as it was not claiming any compensation and was not entitled to receive any compensation.

[26] Once an objection has been properly referred to the High Court, by virtue of s 45(2) of Act 486, applications to intervene at the land reference proceedings may be made under O 15 r 6 of the Rules of Court 2012. All relevant parties will then be before the Court and the issues of compensation can consequently be properly ventilated, avoiding any multiplicity of proceedings.

[27] For good measure, learned counsel cited several instances where landowners and other parties had been allowed to intervene at the land reference proceedings. Amongst which are *Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia* [2014] MLRAU 371, *Ng Kam Loon & Ors v. Director Of Public Works Department Johore & Anor* [1990] 5 MLRH 50, *Lembaga Lebuhraya Malaysia v. Pentadbir Tanah Daerah Kelang* [2019] MLRHU 204, *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 1 MLRA 674. The decision of *Damai Motor Kredit Sdn Bhd & Anor v. Kementerian Kerja Raya Malaysia* [*Damai Motor Kredit*] was said to have been approved by the Federal Court in *Unggul Tangkas*.

[28] Finally, learned counsel for the appellant submitted that although *Unggul Tangkas* concerned the right of TNB as paymaster to intervene in the land reference proceedings, the Federal Court "touched on the right of the landowner" to intervene. The Federal Court expressed agreement with the Court of Appeal in *Damai Motor Kredit*, that it "rightly ruled that the learned High Court judge was in error when he denied the appellants' application to be made interveners".

[29] The respondent, TNB, makes a simple and clear point, that is, the Federal Court decision in *Unggul Tangkas* that "any application ... under O 15 r 6(2)(b) RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court" applied equally to both paymasters such as TNB and to landowners such as the appellant. There is no distinction between the parties as both intend to safeguard their respective interests where the award of compensation is under challenge; and both must take the Form N route as provided under Act 486.

[30] TNB, however, does not stop there. Learned counsel for TNB made this interesting alternative argument. He invites this Court to revisit the decision in *Unggul Tangkas* which is said to be irreconcilable with the various provisions of Act 486 and the established test for intervention. In that regard, learned counsel for TNB urged this Court to set right the decision in *Unggul Tangkas* in view of the wide ramifications to land reference proceedings.

[31] Learned counsel argued that the Federal Court in *Unggul Tangkas* followed the earlier Court of Appeal decision in *Inch Kenneth Kajang*. However, the Court of Appeal in *Inch Kenneth Kajang* failed to "appreciate the underlying difference between intervening to become a party and becoming a party through the filing of Form N. Both can co-exist, and they are not mutually inconsistent"; that the non-filing of Form N does not deprive the right of a person interested to intervene in land reference proceedings so long as the test for intervention is met. Otherwise, the effect of *Unggul Tangkas* would go beyond the purpose and scope of Form N, requiring a person interested who accepts the award without protest or objection to nevertheless file Form N just to participate or be made a party at the High Court.

[32] According to learned counsel, s 37(2) does not cater for the situation where the person interested has accepted the award but still wishes to participate in defending the award. An application to intervene in such circumstances does not run contrary to Act 486; in fact, s 45(2) expressly recognises the application of the Rules of Court 2012 unless the Rules are incompatible with the provisions of Act 486. And, there is nothing incompatible or inconsistent here or which is expressly excluded by Act 486. This argument, of course, is exactly what the appellant has urged upon this Court.

[33] The Third Schedule in Act 486 which deals with the procedure for land reference proceedings also does not contain any provision for intervention applications, paving thus the way for such applications to be made under Rules of Court 2012.

[34] Like the appellant, the respondent cited several instances where applications to intervene in land reference proceedings have been allowed without incident. For instance, *Magasu Sundram T Magasu & Ors v. Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 1 MLRH 204, *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 1 MLRA 674; and *Damai Motor Kredit*.

[35] The respondent makes the further point that it meets the test for intervention as laid down in *Pegang Mining Company Ltd v. Choong Sam & Ors* [1968] 1 MLRA 925, that its rights or liabilities will be directly affected by an order of the Court in the land reference proceedings. As a paymaster, its interests are fundamentally different from those of creditors or shareholders which are purely commercial. It has a direct legal interest in the amount of compensation payable and its interests and rights will be directly affected by any eventual outcome from the land reference proceedings. Pecuniary interests of this nature have been accepted as satisfying the test for intervention - see *Arab Malaysian Merchant Bank Bhd v. Jamaludin Mohd Jarjis* [1991] 1 MLRA 104. Both *Pegang Mining* and *Arab Malaysian Merchant Bank* were not considered by the Federal Court in *Unggul Tangkas*.

[36] In any case, since ss 43 and 55 of Act 486 require notices of the land reference to be served on the respondent, it has the right to participate at those proceedings - see *Delhi Development Authority v. Bhola Nath Sharma* [2011] 2 MLJ 255; *Neyvely Lignite Corporation Ltd v. Special Tahsilar* AIR 1995 SC 1004; *Neelagangabai v. State of Karnataka* [1990] 3 SCC 617.

[37] However, the respondent maintained that whilst the appellant cannot file a Form N as it is well outside the conditions of s 37(1), it still cannot apply to intervene and participate in the reference proceedings. This is because by virtue of ss 38(1), 43(c) and 44(2), the High Court does not have to notify the appellant of the hearing nor direct its presence at the proceedings; neither is the Court required to consider its interests.

[38] Consequently, it was submitted that Act 486 expressly excludes the appellant who has accepted the award of compensation from participating in the land reference proceedings because it has accepted the compensation.

Our Decision

[39] The issue of whether a landowner who has, without any objection, accepted an award of compensation made by the Land Administrator is nevertheless entitled to intervene and participate in land reference proceedings initiated by another interested party, namely the 'paymaster' who had objected to that award of the Land Administrator requires a proper understanding of the law on compulsory acquisitions, especially from the perspective of the landowner. We are however, unequivocal that the answer to this issue is clearly in the affirmative. There are several reasons for this conclusion.

Article 13 Of The Federal Constitution

[40] First, the issue involves a deprivation of property. Article 13(1) of the Federal Constitution guarantees that no person shall be deprived of property save in accordance with law. In the reading and application of this guarantee, there must be a propensity to safeguard as opposed to denying that guarantee. Unless and until there are clear express provisions restricting a right of participation in any exercise to deprive property, any relevant law must be read to allow if not

encourage such participation. The adequacy of any compensation paid for the deprivation may otherwise be compromised.

Land Acquisition Act 1960 [Act 486]

[41] Next, Act 486 is specific law enacted by Parliament to regulate any 'deprivation' of property through a prescribed process and procedure for compulsory acquisition. As explained by KN Segera JCA in the unanimous decision in *Sistem Lingkaran Lebuhraya Kajang v. Inch Kenneth Kajang Rubber Ltd & Anor* [*Inch Kenneth Kajang*] *(supra)*:

> "[4] The LAA 1960 is a special Act relating to the acquisition of land, the procedure for the assessment of compensation to be made on account of such acquisition and all matters incidental thereto, including the manner, procedure, and circumstances upon which any dissatisfied party to an award of compensation may pursue legal redress in the court."

[42] That process or scheme involves an enquiry conducted by the Land Administrator, a land reference at the High Court and, a limited right of appeal to the Court of Appeal and Federal Court. As we examine that process, it should become apparent that what was/is envisaged under Act 486 differs from what was/is actually in practice in some material respects. To a large extent, that has led to the state we are presently in. This may have been due, in some part, to amendments to the Act.

[43] This warrants a closer and careful examination of the scheme under Act 486. Although the Federal Court in *Unggul Tangkas* had acknowledged the scheme of Act 486 as its basis for decision, with respect, that scheme and its application were not fully and properly examined. In the interest of justice and proper determination of rights under Act 486, we must undertake that exercise in this appeal. And, for that purpose, we shall only examine the first two stages of the acquisition process after the formal notices for acquisition have been issued.

i. At The Enquiry

[44] The whole object of the enquiry held under s 12 is to determine the appropriate amount of compensation for the acquisition of the relevant land, consistent with the requirements of art 13 of the Federal Constitution that adequate compensation must be paid for deprivation of property. In that exercise of determining the value of the acquired land and thus the amount of compensation for all interests to be awarded, the Land Administrator is obliged to adhere to all the considerations prescribed in the First Schedule to Act 486. This process is necessary since compulsory acquisition does not involve the scenario of a willing buyer willing seller where the value of the land transacted is agreed following negotiation between the parties concerned.

[45] Towards that end, the Land Administrator is allowed to obtain a written opinion on the value of the scheduled or acquired land – see s 12(1). This

opinion or valuation report, usually prepared by the National Valuation Department, forms the basis of the Land Administrator's award.

[46] While the landowner is not required to prepare a valuation report to counter that obtained by the Land Administrator, in practice, this is generally done as the landowner and any other persons interested may appear before the Land Administrator to make their case on the appropriate value or compensation for the acquisition. This can be readily inferred from the terms of ss 10, 11, 12, 13 and 55 of Act 486, as well as from the contents of Form E. This was also recognised by KN Segera JCA in that same decision of *Inch Kenneth Kajang (supra)*:

> "[17] ... It is for the land administrator and/or his valuer, to file his valuation report at the land reference proceedings in the High Court pursuant to the Third Schedule to support his award. It is neither open nor desirable for the appellant to file any valuation report to support the award of the land administrator in the High Court. However, if the appellant had filed any valuation report in any enquiry before the land administrator the report would form part of the records before the High Court ..."

[47] From these same provisions, it would appear that the category of persons who may attend the enquiry is fairly extensive. Certain persons should be served with notice in Form E to attend the enquiry, namely the occupier of the land, registered proprietor of the land, any person having a registered interest in such land; and any person that the Land Administrator knows or has reason to believe to be interested in the land to be acquired – see s 11. All these persons are easily within the definition of "person interested" in s 2 which reads as including "every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will". This phrase of "person interested" is used quite liberally throughout the Act, sometimes as "interested person" [s 12(2)], "persons interested", or "person whom he knows or has reason to believe to be interested therein" [s 11(1)(d)]; and must thus be given a contextual and not literal meaning.

[48] We agree with the submissions of the appellant that besides the appellant who is the landowner, the respondent would be such person interested who would attend an enquiry. Both the appellant and the respondent in this appeal attended and participated at the enquiry.

ii. At The Reference Proceedings

[49] Insofar as the reference procedure is concerned, it is often overlooked that the award of the Land Administrator is before the High Court by way of a reference as opposed to an appeal or even some other originating process or civil suit. This mode of proceedings actually has a bearing on how the matter is supposed to be dealt with by the High Court. In our view, had this mode been properly appreciated and followed, much of the confusion faced today could also have been avoided.

[50] What is a reference? How does that differ, if at all from any other originating process or suit? *Black's Law Dictionary* [11th edn, Thomson Reuters] defines "reference" as:

> "1. The **act of sending** or directing **to another for** information, service, **consideration, or decision**; esp, the act of sending a case to a master or referee for information or decision...2. An order sending a case to a master or referee for information or decision. 3..."
>
> [Emphasis Added]

[51] *Jowitt's The Dictionary of English Law* [Sweet & Maxwell, 1959] defines reference as:

> "To **refer a question is to have it decided by a person nominated for the purpose**, *in lieu* of the ordinary procedure by action, trial or other judicial proceedings. The person to whom the question is referred to is sometimes called the referee, and the proceedings before him constitute the reference: these proceedings to a great extent resemble those on an ordinary trial, except that they are private; witnesses are examined, and the referee is addressed on behalf of each of the parties, and he makes an award or report containing his decision ..."
>
> [Emphasis Added]

[52] Reference proceedings arise for two reasons under Act 486. First, it is where the Land Administrator on his own motion refers to the High Court for its determination any question on the matters set out in s 36(2). Second, it is in relation to an objection to an award made by the Land Administrator after due enquiry – s 38. It is in this latter respect that we generally see land reference proceedings and where there is much case law. This is also what transpired in this appeal, there was an objection lodged against the award by the respondent, the paymaster, taking the position that the amount awarded as compensation was excessive and not within the remit of the First Schedule.

[53] Regardless the circumstance for referral, all references to the High Court are by the Land Administrator. This is mandatorily provided for in s 36(1) which reads that no reference to Court "shall be made otherwise than by the Land Administrator".

[54] The use of a reference mode makes good sense since other than a reference initiated by the Land Administrator on his own motion and under the circumstances mentioned in s 36(2), there is already an award arrived at after the enquiry. It is the written objection to the award that is referred to the High Court for determination. In fact, s 44(1) provides that the scope of the reference proceedings "shall be restricted to a consideration of the interests of the persons affected by the objection". Consistent with the intention of Act 486, it is apparent that the whole business of ensuring who attends Court during the reference proceedings is at the end of the day, left to the High Court. This is evident from the operation of ss 43, 44, 53 and 55 of Act 486.

[55] As a reference, there are really no parties that is typically seen in any other originating process or civil suit. KN Segara JCA in his dissenting grounds in *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor (supra)* explained:

> "[73] It is patently clear that SPRINT cannot be added as a co-defendant in a reference to Court by the Land Administrator under the provisions of the LAA 1960. **The reference is not a civil suit where the Land Administrator is the plaintiff. The documents submitted to the court in the reference by the Land Administrator are not "pleadings". The reference record is primarily the notes of the enquiry by the Land Administrator, including valuation reports**, and the notices under ss 4, 8, 10, 11, 14, 16, 19, 20, 22, 38(1) and 38(5) of the LAA 1960."
>
> ..."
>
> [Emphasis Added]

[56] However, we note that the Privy Council in *Collector Of Land Revenue v. Alagappa Chettiar (supra)* opined otherwise at p 44:

> "Although upon referring an objection to the High Court for its determination the collector is required to state the grounds on which the amount of compensation was determined, **the reference to the High Court is not in the nature of an appeal from the collector's award. It is in the nature of an original hearing in which the applicant is the plaintiff and the collector the defendant. The onus lies upon the applicant to satisfy the Court by evidence that the amount of compensation awarded is inadequate; and the collector is entitled to call evidence in support of the amount awarded. His evidence is not confined to supporting the award upon the grounds stated in the notice of the reference. He may amplify them or justify the amount awarded on other grounds**. The judge, with the assistance of the advice proffered to him by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him; but if at the conclusion of the evidence he is not satisfied that the amount awarded by the collector is inadequate, the award must be upheld and the application dismissed."
>
> [Emphasis Added]

[57] So, which is correct. In our view, although the "reference" mode is used in Act 486, the mechanics of how that reference is conducted in Court as evidenced in the various provisions of the Act and how it is in fact practised, indicates that the reference is an original hearing, with whoever the objector to the award is as the applicant or plaintiff, and the Land Administrator as the respondent. The position remains the same even if the objector is the paymaster. It is a full hearing at the High Court and not a mere process of the Court scrutinising records as explained by KN Segara JCA in *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor (supra).*

[58] If we were to turn to the law reports, it will be immediately evident that almost all land reference cases cite parties normally seen in adversarial cause papers, as pointed out by the Privy Council. The landowner, paymaster and

even the Land Administrator are cited as the applicant, plaintiff or respondent, as the case may be. Hence, land reference proceedings, as envisaged and practised under the Act, is quite different from that as explained by KN Segara JCA. The proceedings are indeed adversarial in nature.

[59] Consequently, the remarks of the Federal Court in *Unggul Tangkas* relying on *Collector Of Land Revenue v. Alagappa Chettiar (supra)* on the scheme of Act 486 and that the interests of persons interested such as the appellant are taken care of by the Land Administrator requires reconsideration. We will return to this issue later when dealing with *Unggul Tangkas* in greater detail.

[60] The amendments to Act 486 have not made the situation any clearer. Of the many amendments, we single out three – the extensive amendments vide Land Acquisition (Amendment) Act 1984 [A575 of 1984] with effect from 20th January 1984; Land Acquisition (Amendment) Act 1997 [A999 of 1997] with effect from 1st March 1998 and finally, the amendments in 2017 vide Land Acquisition (Amendment of Second Schedule) Rules 2017 [PU(A) 374 of 2017] with effect from 1st December 2017. These amendments have had a material impact on how land reference proceedings have since come to be conducted, quite different from the fairly straight-forward land reference procedure of yesteryears. While Act 486 essentially maintains the specific purpose of regulating all matters related to compulsory acquisition of land, and that proceedings should not become protracted or delayed, we venture to say that with these amendments, land reference proceedings have in fact assumed the character of full-blown contested originating summons. We will touch on the amendments introduced which are relevant for this appeal, especially on the scheme and operation of Act 486.

[61] From the very outset of enactment in 1960, Act 486 saw the engagement of assessors for the purpose of aiding the Judge in determining the objection referred - see original ss 40 to 42 which were deleted vide A575 with effect from 20th January 1984. With the deletion of ss 40 to 42, the High Court conducted the land reference proceedings without the assistance of any assessors. This was explained in the Explanatory Statement to the Bill introducing A575. In fact, there used to be a single High Court Judge hearing all land references for the whole of Peninsula Malaysia. This ensured consistency and uniformity in the conduct and hearing of all land reference proceedings.

[62] This changed with the amendments introduced vide Land Acquisition (Amendment) Act 1997 [A999 of 1997] with effect from 1st March 1998. The role of assessors was reintroduced through ss 40A to 40D. The legality and extent of their involvement has been well discussed in the seminal decision of this Court in *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 4 MLRA 554.

[63] One of the constants that has however remained unchanged is the matter of who may file an objection to an award, the objection being the trigger for a

land reference. Not everyone can file the written objection that is referred to the High Court. Although s 37(1) prefaces with the words "any person interested in any scheduled land", such person has to fall within ss 10, 11, 35 or Part VII, have made a claim to the Land Administrator in due time and, do either of two things. Such person has to either not have accepted the Land Administrator's award or, has accepted payment of the amount of such award but has done so under protest as to the sufficiency thereof. We add that s 37(1) must be read with s 37(3), where the Government, person or corporation on whose behalf land has been acquired "shall be deemed to be a person interested and make objections on any of the grounds" in s 37(1).

[64] It may be readily inferred from the terms of s 37(1) that the persons who are entitled to file an objection are actually more restricted than those who may attend an enquiry. Even if the person interested meets the qualifications in s 37(1), such person may only object on any of the grounds prescribed in s 37(1) – measurement of the land, amount of compensation, persons to whom compensation is payable, and the apportionment of compensation. Once the grounds are identified, no other grounds "shall be given in argument" at the reference proceedings, except with leave of the Court – see s 38(2).

[65] Assuming the person objecting meets the conditions of s 37(1) or (3), s 38(1) further requires all objections to be in writing using the statutorily provided Form N lodged with the Land Administrator within the time period prescribed in s 38(3).

[66] On receipt of Form N, the Land Administrator actually does not have a choice. Under the Act, the Land Administrator is obliged to refer every written objection to the High Court within the time prescribed or within any extended time, using Form O – see s 38(5). In the event the Land Administrator fails to do so, s 38(7) allows any person interested to apply to the High Court for appropriate directions. Presumably, such an application must be pursuant to the Rules of Court 2012.

[67] Now, Form O is very important. Amongst the details that are carried in Form O is information as to the names and addresses of all persons whom the Land Administrator has reason to believe are interested in the land acquired; and also who have been served any notices. In this appeal, the appellant's name and address was repeatedly disclosed by the Land Administrator in Form O - see p 26 of the Core Bundle Vol 2 prepared by the respondent TNB.

[68] Pausing here for a moment and interpolating what we have discussed thus far to the facts in this appeal, it is obvious that the appellant is not entitled to lodge any objection as it does not fulfil the requirements of s 37(1) for lodging an objection. Both parties accept this position. Although the appellant had made a claim to the Land Administrator in due time, the appellant accepted the award without any reservation. Clearly, the appellant does not qualify nor is the appellant entitled to lodge an objection under s 37(1).

[69] Thus, to insist that the appellant lodge an objection when it has no objection and worse, when it does not fall within the category of persons qualified to file such an objection is really a non-starter. Consequently, the decision of the Court of Appeal that the appellant was obliged to lodge Form N in order to participate in the reference proceedings at the High Court is plainly in error.

[70] Even if for a moment the appellant meets the test as set down by this Court in *Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd* [2017] 5 MLRA 633, that it has suffered a loss by reason of the acquisition of its property, the appellant is still not entitled to lodge an objection against the award, whether using the prescribed Form N or any other form or mode. The simple reason is because it accepted the award without any objection. The appellant was satisfied with the amount of compensation awarded.

[71] It was the respondent who was not happy with the award. Hence, it was entitled to lodge a written objection. As for the appellant, the whole purpose of its application to intervene was/is not to object but to participate in the reference proceedings so as to safeguard its rights and interests [menjaga kepentingan dan hak] under art 13 of the Federal Constitution, an intent which is entirely legitimate. According to the affidavit filed in support of its application to intervene and be joined as a respondent to the reference, the appellant explained that the amount of compensation that it would ultimately receive would be affected in the event the paymaster's objection is successful. How then is such a landowner, and for that matter any other person interested who is similarly circumstanced, to attend the reference proceedings. The answer to this poser may be found from understanding what happens to the written objection once it is referred to the High Court.

[72] What happens at the High Court is actually very important and it is this aspect of the scheme and operation of Act 486 which appears to have been frequently overlooked. It is here at this point that the Courts take over from the Land Administrator, so to speak. And, it is here that the issue of the interplay of the rules of procedure as found in the Rules of Court 2012 arises, whether these Rules may be resorted to; if so, under what circumstances.

[73] On receipt of a reference, the High Court is mandatorily required to notify, in writing, the persons identified in s 43 of the hearing date of the reference; serve on those persons the reference and direct them to appear before the Court. Those persons being:

(a) applicant;

(b) the person or corporation, if any, on whose behalf the proceedings were instituted;

(c) all persons interested in the objection, except such, if any, as have consented without protest to receive payment of the compensation awarded; and

(d) if the objection is in regard to the area of the land or to the amount of the compensation, the Land Administrator.

[74] Prior to 1st December 2017, the Court notified the above persons by issuing a statutory Form P. This Form contained the details of the objection and directed attendance or appearance before the High Court of those persons identified in s 43. In 2017, this statutory Form P was deleted vide Land Acquisition (Amendment of Second Schedule) Rules 2017 [PU(A) 374 of 2017]. With effect from 1st December 2017, the Second Schedule which contains all the Forms that are to be used under Act 486 was amended to delete Form P.

[75] With this amendment, while the Courts are still mandatorily required to "cause a notice in writing specifying the day" of hearing and serve the reference and direct appearance at the hearing, the notification is no longer according to a statutory Form but guided by ss 43, 53 and 55. Regardless the position, we make this observation - whether under the original Act 486 or as amended, the notification of the hearing to and directing of persons interested to attend reference proceedings is always very much part of the obligations of the Court.

[76] Be that as it may, it is apparent from the terms of ss 43(c) and 55, the appellant would still be excluded from the list of persons that the High Court would be mandatorily required to notify and direct to attend the reference proceedings. For the same reason earlier discussed, although it is a person interested in the objection, the appellant had "consented without protest to receive payment of the compensation awarded", in which case the High Court is not obliged to notify and direct the appearance of the appellant at the reference proceedings. On the other hand, the respondent TNB as paymaster is obviously a party that must be notified since it is the applicant.

[77] What then is the position of the appellant who is not notified and directed by the High Court to appear at the reference proceedings. This is despite its interests being liberally disclosed by the Land Administrator in Form O.

[78] In our view, this is where the Rules of Court 2012, by virtue of s 45(2), apply:

> (2) Save in so far as they may be inconsistent with anything contained in this Act, the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.

[79] This provision has remained unchanged through the years. In our opinion, bearing in mind the objective of Act 486, that it is to regulate the law on compulsory acquisition so as to ensure compliance with Article 13 of the Federal Constitution in particular, the incorporation of this provision indicates that Act 486 is non-exhaustive, that the Rules of Court 2012 may be resorted to so long as those Rules are not inconsistent with anything contained in Act 486.

[80] In the circumstances of the appellant, the application of the Rules of Court 2012 is not at all inconsistent with Act 486. On the contrary, it complements Act 486.

[81] Order 15 r 6 reads:

> Misjoinder and non-joinder of parties
>
> 6. (1) A cause or matter shall not be defeated by reason of the misjoinder or non-joinder of any party, and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.
>
> (2) Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application:
>
> (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
>
> (b) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of relating to or connected with any relief or remedy claimed in the cause or matter, which in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

[82] The respondent argued that ss 37(1), 38, 43(c), 44(2) and 55 expressly excludes the appellant who has accepted the award from participation at the reference proceedings.

[83] With respect, we disagree. Given our earlier observations on how references are more in the character of a contested originating process, that there are parties to the reference, that the reference is on an objection which relates ultimately to the matter of determining the question of adequacy of compensation under art 13 of the Federal Constitution, the landowner obviously and rightly has an interest to be added as a party and to appear at the reference proceedings. Intervention for this purpose is far from converting the appellant from a person who has accepted the award without protest and who has no objections to the award, to a person who now objects to the award.

[84] The landowner's appearance and participation at the reference proceedings is, in our view, consistent with its rights and interests under art 13 and the construction and interpretation of Act 486 should always have that as a forefront consideration. In fact, its participation is consonant with the rules

of natural justice and will assist the Court in its determination of the objection lodged.

[85] In any case, these provisions are not drafted in exclusionary terms. Far from it, so it will be wrong to say that Act 486 has expressly excluded the appellant from participation at the land reference proceedings. These provisions merely provide for conditions or circumstances for objecting to an award, and for notification and service of reference proceedings. In no way may it be suggested that these provisions in Act 486 expressly preclude the appellant from participation at the reference proceedings. All that may be inferred from these provisions in relation to the appellant is that the appellant has no right to object to the award; neither does the appellant have a right to insist that it be notified of the land reference proceedings and be served with the related papers. It will be quite wrong to say that these provisions and the scheme of Act 486 exclude the application of the Rules of Court 2012 such as to prevent a legitimate landowner as the appellant from intervening in the reference proceedings and protecting its interests and rights.

[86] Even s 44(2) does not bear the meaning suggested by the respondent, that the Court is not to consider the interests of persons interested who have accepted the award. This subsection must be read together with subsection 44(1). The whole of s 44 reads as follows:

> Restriction on scope of proceedings
>
> 44. (1) In every proceeding under this Part the scope of the inquiry shall be restricted to a consideration of the interests of the persons affected by the objection.
>
> (2) The Court shall consider the interests of all persons interested who have not accepted the award, whether these persons have themselves made an objection or not.

[87] In our opinion, s 44(1) defines the scope of the reference proceedings, that it is to the consideration of interests of persons affected by the objection. Since it is the paymaster respondent who has objected to the grant of incidental costs of RM192,654.22 arising from the loan interest that the Land Administrator awarded to the appellant, it is undeniable that the High Court must consider the interests of the appellant which is directly affected by that objection. In that consideration, the High Court is reminded in s 44(2) that it must also consider the interests of others, namely all persons interested who have not accepted the award but who may not have filed an objection. With the High Court considering the interests of the appellant when hearing the objection, we cannot see how the appellant then cannot participate in the reference proceedings, albeit not mandatorily required to be notified by the High Court under Act 486.

[88] All that is quite different from saying that the appellant has been excluded from participation at the land reference proceedings. In this regard, the Third Schedule assumes centre stage. When the land reference is properly before

the High Court, the conduct of those proceedings is dictated by s 45(1A), introduced vide Land Acquisition (Amendment) Act 1997 [A999 of 1997] with effect from 1st March 1998. Section 45(1A) mandates that the provisions of the Third Schedule shall apply to every land reference proceeding. The Third Schedule contains elaborate provisions dealing with evidence and procedure at those proceedings.

[89] In the Third Schedule, there are now "parties" to the reference proceedings, namely the applicant and the respondent. The applicant being the person upon whose application in accordance with s 38 reference to the Court is made in respect of an objection under s 37. The Third Schedule envisages valuers' reports being filed and witnesses testifying through affidavits by both parties. Both the valuers and any other witness called by either party may also be cross-examined. Paragraph 2 of the Third Schedule further provides that the valuer's report filed by the applicant alone must establish the *prima facie* case for the applicant. The respondent's valuer's report must also be capable of rebutting the applicant's valuer's report.

[90] The respondent had submitted that the Third Schedule does not provide for interventions to which argument we agree. The Third Schedule actually does not even provide for the exclusion of application of the Rules of Court 2012. Thus, by virtue of s 45(2), the Rules of Court 2012 will then "apply to all proceedings before the Court" so long as these Rules are not "inconsistent with anything contained in this Act".

[91] As discussed, none of the provisions within Act 486, whether expressed or by necessary inference, provide for the exclusion of a landowner who has accepted the award without objection to participate at any land reference proceedings. Consequently, a landowner whose land stands acquired and whose interests are undeniably affected by an objection referred to the High Court, is indeed entitled to invoke O 15 r 6 of the Rules of Court 2012. Such a landowner as the appellant before us is entitled to apply to intervene and participate in the reference proceedings in order to protect its rights and interests.

Unggul Tangkas

[92] Finally, the decision of this Court in *Unggul Tangkas*. These were the material facts in *Unggul Tangkas*.

[93] The respondent, Unggul Tangkas owned two pieces of land which were compulsorily acquired for the appellant, TNB. It was dissatisfied with the award of compensation and filed its objection in Form N to the Land Administrator who then initiated two reference proceedings at the High Court. TNB filed applications under O 15 r 6 of the Rules of Court 2012 for leave to intervene in the proceedings and to file valuer's report and rebuttal reports. The applications were opposed on ground of abuse of process.

[94] The High Court allowed the intervention but disallowed the filing of reports. Both Unggul Tangkas and TNB appealed against those orders. At the Court of Appeal, the appeal on the intervention was allowed; in turn the appeal on the issue of adducing reports failed.

[95] Three questions of law were posed at the Federal Court – the first of which is whether the filing of an objection vide Form N pursuant to s 37 of Act 486 is the only mode available for a paymaster to be a party in a land reference proceeding before the High Court. The other two questions relate to the right of the paymaster to be a party to such proceedings and whether when given this right, it can file a valuer's report under the Third Schedule to Act 486. TNB, the respondent in this appeal, was the paymaster in *Unggul Tangkas*.

[96] In answering the questions posed, the Federal Court reminded that the High Court proceedings arose out of an objection by the landowner over the amount of compensation, obviously dissatisfied with the amount awarded. TNB applied to intervene, presumably to sustain at the very least the amount awarded. The first question was ultimately answered in the affirmative whilst the second was answered in the negative. With those answers, there was no longer any need to answer the third question.

[97] As can be seen, the first question in *Unggul Tangkas* is the same question posed in this appeal, except that it is now posed in the context of the landowner who has accepted the award without any objection. With the decision in *Unggul Tangkas*, it is no wonder that TNB has urged us to give the same answer here.

[98] The Federal Court noted that TNB had been present at the enquiry before the Land Administrator but was not made a party or an intervenor. After noting that s 45(2) only provides for a complementary role of Rules of Court 2012 to the Act if it does not run contrary to the provisions of the Act, the Federal Court held that O 15 r 6(2)(b) had no application in the context of the case. The Federal Court cited with approval KN Segara JCA's observations in *Inch Kenneth Kajang*:

> [16] In the overall scheme and context of the Land Acquisition Act, any application by the appellant under O 15 r 6(2)(b) of the RHC 1980 to be a party, is in appropriate. It would amount to an abuse of the process of the Court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which 'persons interested' under the LAA 1960 are to participate in proceedings either before the land administrator at an enquiry or, in the court, upon a reference by the land administrator upon any objection to an award. Filing of Form N is the most appropriate and the only mode available under the LAA 1960 to any person interested under the LAA 1960 to become a party in a land reference at the High Court relating to an objection to the amount of compensation.

[99] The Federal Court rejected TNB's offer to accept the Court of Appeal's majority decision in *Sistem Penyiaran Trafik KL Barat v. Kenny Heights Development Sdn Bhd & Anor (supra)*, preferring and endorsing the unanimous decision in *Inch Kenneth Kajang* on the basis that it was correctly decided, that the Court

had "considered in totality of the circumstances of the case in the light of the scheme of the Act and the kind of special regime it has created, such that O 15 r 6(2)(b) of ROC 2012 is not applicable for the purpose of making a party either as a co-respondent or an intervener". The Federal Court did not elaborate on that overall scheme and it would appear that it had in fact adopted wholesale the view of the Court of Appeal in *Inch Kenneth Kajang* in that respect.

[100] In light of the above, a closer examination of the two Court of Appeal decisions is warranted. There were actually three decisions of the Court of Appeal where KN Segara JCA had consistently expressed his view about Act 486 as a "special Act", that its statutory provisions "must be strictly adhered to and made applicable to all relevant parties"; that the "LAA 1960 is a complete and comprehensive Act on substantive law, procedure and forms. It ensures that no person would be deprived of his constitutional right to adequate and fair compensation without proper inquiry, when deprived by the State of his property". These are *Inch Kenneth Kajang* [decided on 1 September 2010], *Lembaga Lebuhraya Malaysia v. Semenyih Jaya Sdn Bhd (supra)* [decided on 1 June 2010] and *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor (supra)* [decided much earlier on 5 January 2009].

[101] In *Inch Kenneth Kajang*, the appellant was the concessionaire appointed by the Federal Government to construct a highway under a privatisation agreement. The Court of Appeal identified five pertinent facts about the concessionaire who was seeking to intervene in the reference proceedings initiated by the landowner:

i. it was not disputing the award made by the Land Administrator;

ii. it did not file any objection in Form N;

iii. it did not seek any leave to file Form N out of time;

iv. it did not evince any interest or attempt to participate at the enquiry;

v. its admitted intention in wanting to intervene was to defend and not to oppose the award.

[102] Aside from these facts, the Court of Appeal noted that the acquired lands were owned and vested in the name of *Lembaga Lebuhraya Malaysia*; that any liability the concessionaire had to pay the compensation for the acquisition would arise under the privatisation agreement and not, under Act 486, whether it was at the conclusion of the enquiry or the reference proceedings; and, that the application to intervene was made four years after the award had been referred to the High Court. In short, the Court did not find the concessionaire to be within the meaning of 'person interested'. Given these circumstances, there were no matters in dispute that may be effectively and completely determined and adjudicated upon which necessitated the concessionaire to be a party to the reference proceedings, a requirement under O 15 r 6(2)(b)(i) of

the Rules of the High Court 1980, thus affirming the High Court's dismissal of the application for intervention.

[103] KN Segara JCA, writing on behalf of the Court of Appeal explained why the rules of procedure under the then Rules of the High Court 1980 could not be invoked, and it is that explanation on the overall scheme and context of Act 486 which was picked up and endorsed by the Federal Court in *Unggul Tangkas* and which we cited earlier.

[104] In the explanation of the overall scheme and operation of Act 486, we find that the observations were too general and with respect, His Lordship had not properly and comprehensively addressed quite a few critical and relevant aspects as we have done above. Amongst them is the matter of persons interested, that while a person may qualify as a person interested under s 2, such person may nevertheless not qualify to file an objection because of the conditions precedent in s 37. Such a person remains a person interested, except that this person cannot file a written objection to the award.

[105] His Lordship has further not addressed or taken into account the function and role of the Court in the conduct of reference proceedings, that it is the obligation of the High Court to notify all persons interested in the reference proceedings. Furthermore, by virtue of s 44, the High Court is obliged to consider the interests of all persons interested regardless whether those persons have themselves filed an objection or have been notified by the High Court to attend the proceedings. The presence or interests of the appellant as landowner was also amply indicated in Form O. This critical aspect was not considered in *Inch Kenneth Kajang* and consequently, not by the Federal Court in *Unggul Tangkas*.

[106] His Lordship also opined that both *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* and *Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd* [2009] 4 MLRA 125, two decisions which were urged upon the Court of Appeal, "can be easily distinguished on the facts vide to the present appellant's application in the High Court".

[107] First, the decision in *Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd* is actually irrelevant for the purposes of this appeal as it concerned the question of whether paymasters were entitled as 'persons interested' to lodge Form N. The Court of Appeal answered in the affirmative and this decision was affirmed by the Federal Court. The decision, however, does not concern the question of application of the rules of procedure in relation to a landowner who had accepted an award without any objection, which is the issue in this appeal.

[108] Other than what we have set out above, no other reasons were proffered by the Court of Appeal in *Inch Kenneth Kajang* as to why it was departing from its own earlier decision of *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor*. That decision, though by majority, was nevertheless binding on the Court of Appeal then – see *Tenaga Nasional Berhad*

v. Chew Thai Kay & Anor [2022] 2 MLRA 178, where the Federal Court had voiced its concerns on such practice and we echo those principles here.

[109] As for the Court of Appeal decision in *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor*, we find that decision relevant as the *ratio decidendi* concerned the application or otherwise of the Rules of the High Court 1980, whether a person interested may invoke these Rules to intervene in the reference proceedings. We agree with the majority in that SPRINT, the concessionaire who had to pay compensation to the landowner Kenny Heights for the acquisition of its land for the construction of a highway which we now know as the SPRINT Highway, was entitled to intervene in the reference proceedings initiated by Kenny Heights, invoking O 15 r 6 of the Rules of the High Court 1980. Kenny Heights objected to the application but the Land Administrator did not. The application was refused and on appeal, allowed by majority with KN Segara JCA, dissenting.

[110] Citing the Federal Court decision in *Arab Malaysia Merchant Bank Berhad (supra)* as well as a line of decisions recognising legal interest is established where compensation for acquisition of land is to be paid by the party for whom the land was acquired, Abdul Malik Ishak JCA writing for the majority in the Court of Appeal reasoned that SPRINT was entitled to intervene as it:

> "... has a direct legal interest in the amount of compensation payable in respect of the lands acquired pursuant to the Act for the purpose of the Highway which is a public utility and consequently in the land reference brought under s 37 in respect of the lands. It has the standing to make an application to the Court and to object to the amount of the compensation under s 37(1)(b)."

[111] For the same reasons that we have already discussed, the interests of such a person interested [that is, the paymaster], if not already notified by the Court under s 43 to attend, surely will be affected one way or another in the reference proceedings in which case, such a person is indeed entitled to attend and participate through the mechanics of the Rules of Court 2012. If a paymaster is entitled to so attend, more so a landowner who has legal and pecuniary interests under art 13 of the Federal Constitution. In our view, since the interests of all persons interested must be considered by the Court when determining the objection or adequacy of compensation, s 45(2) must be seen as an enabling provision to ensure that the attendance and participation of all persons interested may be facilitated, and in the present appeal, through O 15 r 6 of the Rules of Court 2012.

[112] We must touch on the decision of *Lembaga Lebuh Raya Malaysia v. Semenyih Jaya (supra)* cited by the Court of Appeal in the present appeal in support of its view that the procedure adopted by the appellant here was an abuse of process – see paragraph [9] of grounds.

[113] In the first place, the Court of Appeal had cited what was in fact the minority view of KN Segara JCA in that decision. Further, like *Cahaya Baru*,

the decision concerned the definition of 'persons interested' and not the matter of application of rules of procedure.

[114] In *Lembaga Lebuh Raya Malaysia v. Semenyih Jaya (supra)*, both the paymaster [LLM] and the landowner had lodged separate Form N and two reference proceedings were thus initiated. The landowner intervened in the reference proceedings lodged by the paymaster and applied to have the proceedings struck out on grounds of lack of *locus standi* and estoppel. The application was allowed by the High Court. On appeal, this was overturned.

[115] The reasoning of the majority in the Court of Appeal focused on the issue of whether the concessionaire, as paymaster, was within the definition of 'person interested' in s 2 and thus had a statutory right to file Form N. The Court of Appeal opted to throw the net 'wider', that Parliament had manifested intention to include paymasters within the definition in s 2 by use of the words, "every person claiming an interest in compensation to be made on account of the acquisition of land under the LAA 1960". KN Segara JCA on the other hand, took the view that the application to strike out the reference should have been dismissed in limine as it was "wholly irregular and unauthorised under the provisions of the LAA 1960". His Lordship held that the two land reference cases ought to have been heard together on its merits.

[116] It is unfortunate that the Federal Court decision of *Perbadanan Kemajuan Pertanian Selangor v. JW Properties Sdn Bhd (supra)* on how interests have since come to be construed by the Court was not cited to the Federal Court in *Unggul Tangkas*. Had these material considerations been examined, we are confident that the outcome would have been different.

[117] By no stretch of any imagination are we advocating that the scheme of Act 486 allows a complete wholesale adoption and application of the Rules of Court 2012 without more. Section 45(2) clearly allows its application so long as those rules are not inconsistent with the provisions in Act 486. Allowing the complementary role of the rules of procedure does not, in our opinion mean that the whole acquisition process from enquiry to final award will become delayed or protracted. To our mind, what is actually of greater importance is the issue of the rights of persons interested to be heard in that whole acquisition process, whether at the enquiry or at the reference proceedings before the High Court. There should be no injustice caused to any person interested in the name of speedy disposal. We, in fact, cannot see how the application to intervene by a person interested in the acquisition, and it cannot be denied at all that the appellant landowner here is such a person, will delay the acquisition process or even cause it to be protracted. We must not lose sight of the object of these hearings – it is to determine the adequacy of compensation by reason of compulsory acquisition and the identity of persons interested. The construction and interpretation of Act 486 should always have that consideration in mind.

[118] With these clear terms as to how evidence is to be tendered and received by the High Court and what the procedure is in reference proceedings, it is difficult

to agree with the view held by the Court of Appeal and to also maintain the position adopted in *Unggul Tangkas*. We also find reliance on the Privy Council decision in *Collector Of Land Revenue v. Alagappa Chettiar (supra)*, misplaced. It is incorrect to say that the Land Administrator is present at the reference proceedings to defend the award as he is "fully entitled to lead such evidence as he considered necessary to do so" equates to a landowner's lack of a right to attend and participate in reference proceedings initiated by some other person interested. Since reference proceedings are original proceedings with parties cast in the respective roles, as explained in *Collector Of Land Revenue v. Alagappa Chettiar*, and as envisaged under the Third Schedule, the Land Administrator does not really defend the award for anyone. The Land Administrator merely explains its award and provide further justification if he chooses.

[119] Our decision is fortified by the Federal Court's approval of the decision in *Damai Motor Kredit (supra)* in *Unggul Tangkas*.

[120] In *Damai Motor Kredit*, the registered owner of land acquired at the request of the respondent for the construction of two elevated intersections at Jalan Tampoi in Johor Bahru was unaware of an application by the respondent to extend time to refer its objection to Court. The respondent was in delay of almost two years. The application was allowed by the High Court and the appellant together with its joint-venture partner applied to, amongst others, intervene and set aside the order granting the extension.

[121] The High Court dismissed the landowner's application. The Court of Appeal allowed the appeal, ruling that the High Court was in error in denying the landowner's application to intervene. Clearly, it could not be denied that the landowner's interests were at stake. They were the original parties at the enquiry and "as such they ought to have been named in the OS proceedings by the respondent". The Federal Court held that the Court of Appeal "rightly ruled that the learned High Court Judge was in error when he denied the appellant's application to be made interveners".

[122] In our view, this implicitly endorses the application of the Rules of Court 2012, that an application to intervene in the reference proceedings may be made in appropriate circumstances. Just like the landowner in *Damai Motor Kredit*, the appellant before us ought, for this added reason, to have been named in the reference proceedings.

Conclusion

[123] For all these reasons, the answer to the issue posed must clearly be in the affirmative as the appellant's interests, as landowner will surely be affected by the eventual outcome of such reference proceedings.

[124] We thus allow this appeal and set aside the decision of the Court of Appeal and reinstate the decision and order of the High Court.

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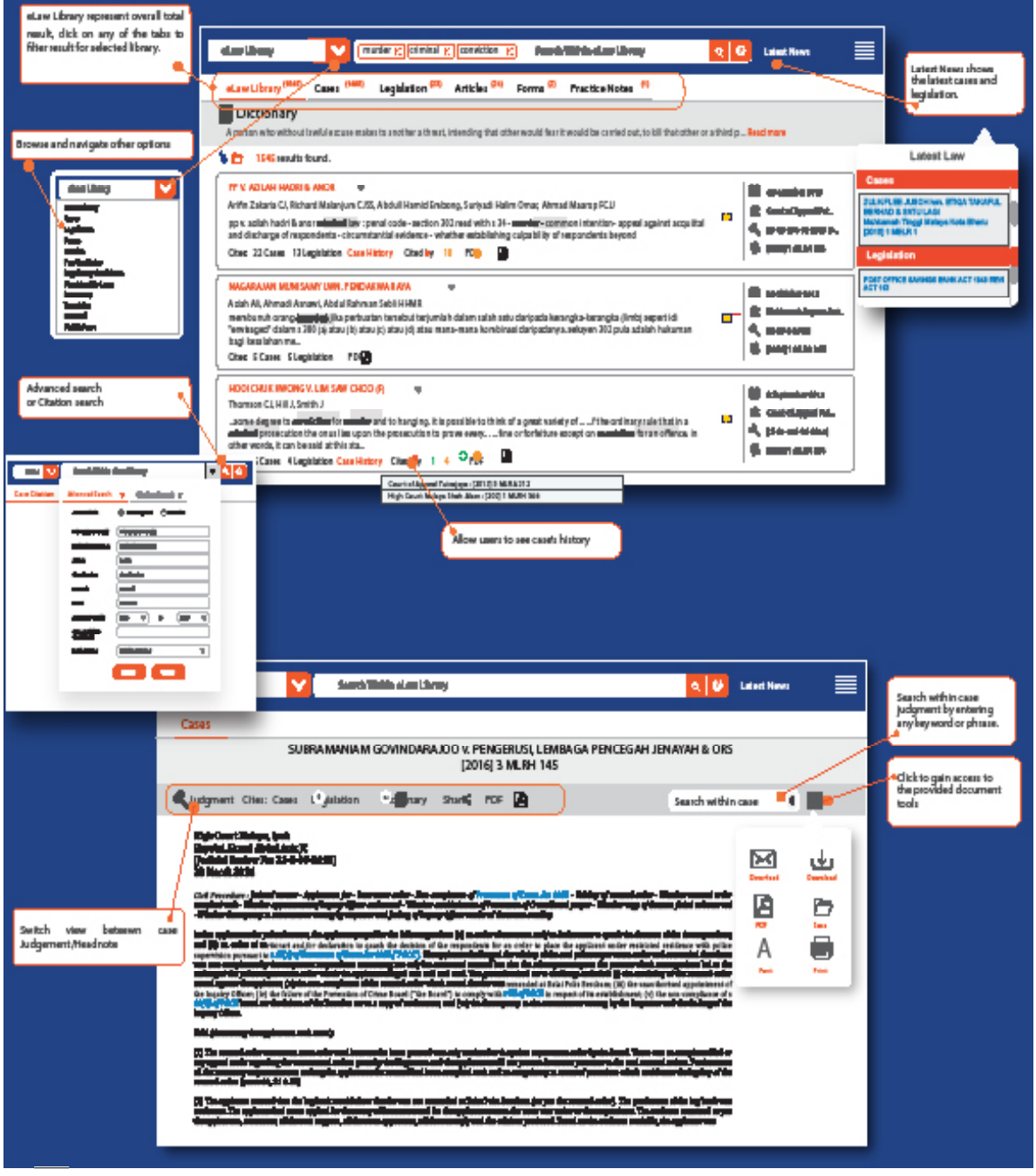

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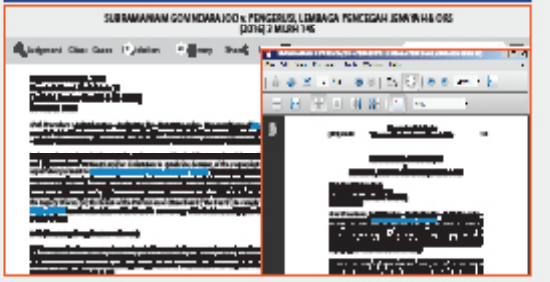

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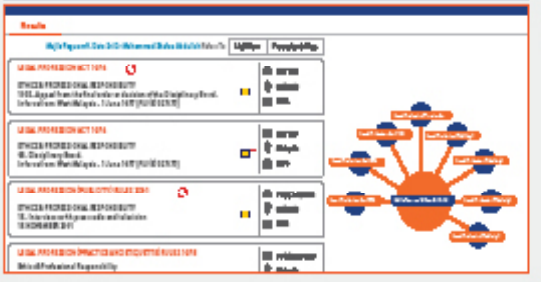

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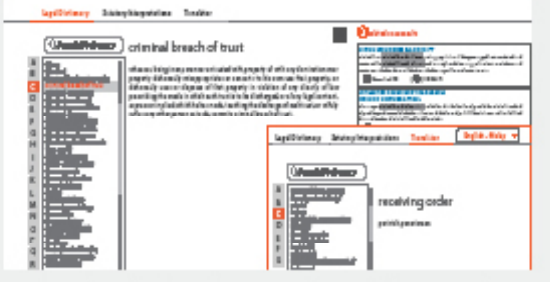

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