

JUDGMENT Express

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Pendaftar Hakmilik Negeri Perak
v. Wong Sew Ling & Ors

[2025] 3 MLRA

PENDAFTAR HAKMILIK NEGERI PERAK

v.

WONG SEW LING & ORS

Court of Appeal, Putrajaya
Ravinthran N Paramaguru, Collin Lawrence Sequerah, Ahmad Kamal Md
Shahid JJCA
[Civil Appeal No: A-01(NCVC)(A)-102-03-2023]
10 January 2025

Land Law: Title — Titles in perpetuity (freehold) — Whether State Authority, when approving a proposed conversion of category of land use and subdivision of land and in process of re-alienating land, could reduce its tenure from a term in perpetuity to term of years not exceeding 99 years, ie from freehold to leasehold — National Land Code, s 204E(3) — Federal Constitution, arts 4(1), 8(1), 13

The main issue in this appeal was whether a State Authority, when approving a proposed conversion of category of land use and subdivision of land and in the process of re-alienating the land, could reduce its tenure from a term in perpetuity to a term of years not exceeding 99 years or, in other words, from freehold to leasehold. The original landowners in respect of the lands in question held them previously under four documents of title under Certificate of Title ('CT') 19426 Lot 10304, CT 25458 Lot 10220, CT 25459 Lot 10221 and CT 25460 Lot 12222. At that time, the status of the lands was for terms in perpetuity or freehold. The original landowners then surrendered the CTs to the State Authority for the purpose of developing the lands into a housing scheme. The Respondents were the purchasers of the properties developed/built by the landowners. The status of the lands at the time of purchase was leasehold for a period of 99 years. The Respondents filed this action seeking a declaration that each of the properties purchased by them and registered as leasehold for a term of 99 years be declared null and void. They also sought an order that the Land Administrator replace their titles for a period of 99 years (leasehold) with titles in perpetuity (freehold). The High Court Judge ('HCJ') allowed the Respondents' action, resulting in this appeal.

Held (dismissing the appeal with costs):

(1) In addressing the issue of whether the State Authority could convert the land status from a term of perpetuity (freehold) to that of 99 years' lease (leasehold) after re-alienation, the cases applicable were *Pengarah Tanah Dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* ('Sri Lempah'), and *Leo Leslie Armstrong v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur* ('Leo Leslie Armstrong') where it was held that to do so would be *ultra vires* the provision of s 204E(3) of the National Land Code ('NLC').



In addition, the case of *Chin Kim Phin v. Director of Lands & Surveys, Sabah & Anor* was on all fours with the facts of this case and followed the ratio in *Sri Lempah*, which held that the appellant in that case had no power to impose the condition requiring the respondent to give up its freehold title and receive in exchange, a 99-year lease; such condition was *ultra vires*. The HCJ was thus correct in holding that the principle in the *Sri Lempah* applied. (paras 20-22)

(2) The HCJ further recognised that the doctrine of estoppel raised by the Appellant had no place where the act was *ultra vires*. There was no good reason to disagree with the HCJ. His findings were supported by authority when he cited the case of *Leo Leslie Armstrong* and held that the fact such a consent (in an application to convert a part of its land to the category of land use to that of commercial, and in its application for subdivision agreed for the rest of the land to be converted from freehold to leasehold) was given, did not bar the plaintiff from challenging that the reduction in tenure from freehold to leasehold was a nullity. (paras 23-24)

(3) The HCJ further held that also based on the authority of *Leo Leslie Armstrong*, it was settled law that the law of limitation was not applicable where the decision being challenged was illegal or *ultra vires*. Again, there was no good reason to disagree with the findings of the HCJ. The principle of *caveat emptor* or “let the buyer beware” that was raised by the Appellant, being more suited to a case in contract and in private law, had no place in the matter of land law which was a matter of public law. It had, therefore, no application to the facts of this case. (paras 26-28)

(4) There was also a constitutional dimension to the subject matter of this appeal and that was encapsulated in art 13 of the Federal Constitution (‘Constitution’). In particular, it was sub-article (1) which warranted attention here. The sub-article prevented any arbitrary confiscation or deprivation of property unless it was expressly sanctioned by the law. This placed the actions of the State Authority in converting the land status from a term in perpetuity to that of a 99-year lease after re-alienation, squarely within the prohibition of art 13 as being in direct contravention of s 204E(3) of the NLC. (paras 29-31)

(5) The HCJ further alluded to the fact that the Respondents had asserted that their neighbours had secured freehold titles under somewhat similar circumstances and would, of course, have expected similar treatment in respect of their titles. The HCJ placed reliance upon arts 4(1) and 8(1) of the Constitution in affirming the constitutional guarantees with regard to the supremacy of the Constitution and the equality of the law and the fact that all were entitled to equal protection of the law, in coming to his findings. The correctness of the HCJ’s findings in that respect was therefore affirmed. (paras 32-34)

(6) The answer to the question posed at the outset and constituting the main issue in this appeal was, thus, in the negative. (para 35)



Case(s) referred to:

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Berhad [1995] 1 MLRA 738 (refd)

Chin Kim Phin v. Director Of Lands & Surveys, Sabah & Anor (Encl 1) [2020] MLRHU 339 (folld)

Leo Leslie Armstrong v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur [2014] 5 MLRA 211 (folld)

Ngo Ong Chung & Ors v. Pengarah Tanah Dan Galian Perak Darul Ridzuan [2013] 6 MLRH 191 (refd)

Pengarah Tanah Dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 MLRA 132 (folld)

Legislation referred to:

Federal Constitution, arts 4(1), 8(1), 13(1)

National Land Code, s 204E(3)

Counsel:

For the appellant: Mohd Fitri Sadarudin; State Legal Advisor's Office

For the respondents: Norazura Mohamed Mokhtar (Nurareena Said with her); M/s Azura Mokhtar & Low

[For the High Court judgment, please refer to *Wong Sew Ling & Ors v. Pendaftar Hakmilik Negeri Perak* [2023] MLRHU 334]

JUDGMENT**Collin Lawrence Sequerah JCA:****(A) Introduction**

[1] The short issue in this appeal is whether or not a State Authority, when approving a proposed conversion of category of land use and subdivision of land and in the process of re-alienating the land, may reduce its tenure from a term in perpetuity to a term of years not exceeding 99 years or in other words, from freehold to leasehold.

[2] This is a unanimous decision.

(B) Background Facts

[3] The original landowners in respect of the lands in question held them previously under four (4) documents of title under Certificate of Title ("CT") 19426 Lot 10304, CT 25458 Lot 10220, CT 25459 Lot 10221 and CT 25460 Lot 12222 respectively.



[4] The original landowners had the intention to develop the lands into a housing scheme. At that time, the status of the lands was for terms in perpetuity or freehold.

[5] The original landowners surrendered the CT's to the State Authority for the purpose of developing the lands into a housing scheme on the following dates:

Certificate of Title ("CT")	Date Of Surrender
CT 19426 Lot 10304	07.11.1978
CT 25458 Lot 10220	28.10.1977
CT 25459 Lot 10221	18.11.1977
CT 25460 Lot 10222	24.02.1982

[6] The Respondents were the purchasers of the properties developed/built by the landowners. They purchased the properties from a housing developer somewhere in 1980s. The status of the lands at the time of purchase was leasehold for a period of 99 years.

[7] The Respondents filed the current action seeking a declaration that each of the properties purchased by them and registered as leasehold for a term of 99 years be declared null and void. They also sought an order that the Land Administrator replace their titles for a period of 99 years with titles in perpetuity (freehold).

[8] The Respondents contended that when the individual titles were issued, there was a mistake because the land title status ought to have been for a term in perpetuity (freehold), rather than a term of leasehold for 99 years.

(C) Parties' Submissions

[9] The position taken by the Appellant is essentially twofold.

[10] First, that of estoppel.

[11] The Appellant contends that when the original developer/landowner had agreed to the condition imposed by the State Authority that the lands were given back in the form of leasehold for a term of 99 years, the Respondents are now estopped from claiming to have the lands reconverted back to freehold.

[12] The Appellant cited *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Berhad* [1995] 1 MLRA 738 in support.

[13] Secondly, the Appellant invokes the maxim, *caveat emptor*. The Appellant asserts that when the Respondents bought the lands from the original developer/landowner, it was their duty as the purchasers to practice due diligence in conducting a search and inspection as to the nature, condition or defects of the land before they decided to purchase the lands.



[14] Having failed in that endeavour, the Appellant submitted that the principle of *caveat emptor* or “let the buyer beware” would apply and therefore, the Respondents cannot now complain that the status of the lands ought to have been freehold.

[15] The Respondents were at liberty to not proceed with the Sale and Purchase agreements if they were unagreeable to the 99-year lease period.

[16] The Respondents, on the other hand, submitted that the State Authority was not empowered under the National Land Code (NLC) nor had they the discretionary power to alter the land tenure from its status as freehold to leasehold of 99 years.

[17] The Respondents further submitted that a plea of estoppel is not available when the act complained of is *ultra vires*.

(D) Analysis And Decision

[18] As stated at the outset, the main issue in this appeal is whether or not a State Authority, when approving a proposed conversion of category of land use and subdivision of land and in the process of re-alienating the land, may reduce its tenure from a term in perpetuity to a term of years not exceeding 99 years or in other words, from freehold to leasehold.

[19] We were fortunate that we did not have to wrestle with the horns of this dilemma without the assistance of good authority, (as eloquently put in a famously decided case by the Privy Council).

[20] The cases in point are the cases of *Pengarah Tanah Dan Galian Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 MLRA 132, and the case of *Leo Leslie Armstrong v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur* [2014] 5 MLRA 211, where it was held that to do so would be *ultra vires* the provision of s 204E(3) of the National Land Code and this was what the case held:

“(3) If the State Authority decides to approve the application, whether as originally submitted or as amended pursuant to subsection (2), the State Authority shall proceed to determine, in respect of each portion or unit to be re-alienated, the matters specified in sub-section (2) of s 79, as if the land comprised in the unit had already become State land:

Provided that where the original title is a title in perpetuity, the period for which the land is to be re-alienated shall also be in perpetuity, and where the original title is for a period of years, the period for which the land is to be re-alienated shall not be less than the remainder of the period of the lease for which the land was held under the original title.”

[Emphasis Added]



[21] The case of *Chin Kim Phin v. Director Of Lands & Surveys, Sabah & Anor (Encl 1)* [2020] MLRHU 339 was on all fours with the facts of the instant case and followed the ratio in *Sri Lempah (supra)* which held that the appellant in that case had no power to impose the condition requiring the respondent to give up its freehold title and to receive in exchange, a 99-year lease such condition being *ultra vires*.

[22] We are therefore in agreement with the learned High Court Judge that the principle in the *Sri Lempah* case applies.

[23] The learned High Court Judge (HCJ) further recognised that the doctrine of estoppel had no place where the act is *ultra vires* when he held in his grounds of judgment the following:

“That the registered proprietor may have earlier consented to have it converted from freehold to leasehold is not a bar for an action to have it reconverted back to freehold. In other words, the earlier consent would not operate to estop the registered proprietor from suing for the land to be reconverted back to freehold.”

[24] We see no good reason to disagree with His Lordship. His Lordship’s findings were supported by authority when he cited the case of *Leo Leslie Armstrong (supra)* and held that the fact such a consent (in an application to convert a part of its land to the category of land use to that of commercial, and in its application for subdivision agreed for the rest of the land to be converted from freehold to leasehold) was given, does not bar the plaintiff from challenging that the reduction in tenure from freehold to leasehold was a nullity.

[25] In the case of *Ngo Ong Chung & Ors v. Pengarah Tanah Dan Galian Perak Darul Ridzuan* [2013] 6 MLRH 191, it was held, on roughly similar facts, the following:

“For the reasons stated, consent, waiver or estoppel cannot prevail over the principle of *ultra vires*.”

[26] The HCJ further held that also based upon the authority of *Leo Leslie Armstrong (supra)*, it was settled law that the law of limitation is not applicable where the decision being challenged is illegal or *ultra vires*.

[27] Again, we find no good reason to disagree with the findings of the learned HCJ.

[28] The argument raised by learned counsel for the Appellant that the principle of *caveat emptor* or “let the buyer beware” being more suited to a case in contract and in private law, has no place in the matter of land law which is a matter of public law. It had therefore no application to the facts of this case.



[29] There is also a constitutional dimension to the subject matter of this appeal and that is encapsulated in art 13 of the Federal Constitution which reads as follows:

“Rights to property.

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

[30] In particular, it is sub-article (1) which warrants attention here. The sub-article prevents any arbitrary confiscation or deprivation of property unless it is expressly sanctioned by the law.

[31] This places the actions of the State Authority in converting the land status from a term in perpetuity to that of a 99-year lease after re-alienation, squarely within the prohibition of art 13 as being in direct contravention of s 204E(3) NLC.

[32] The learned HCJ further alluded to the fact that the Respondents had asserted that their neighbours had secured freehold titles under somewhat similar circumstances and would have of course expected similar treatment in respect of their titles.

[33] The learned HCJ in this respect placed reliance upon arts 4(1) and 8(1) in affirming the constitutional guarantees with regard to the supremacy of the Constitution and the equality of the law, and the fact that all are entitled to equal protection of the law in coming to his findings.

[34] We affirm the correctness of the HCJ’s findings in that respect.

[35] Our answer to the question posed at the outset and constituting the main issue in this appeal is therefore in the negative.

[36] In the premises and for the reasons advanced, we dismissed the appeal with costs of RM5,000.00.

