

When is a Compulsory Acquisition Irreversible?

by Ho Ai Ting

When there is a move by the State Authority to acquire private land, the landowner's concern is often centred on two issues:

- (a) how to prevent the compulsory acquisition; or
- (b) how to seek higher land compensation if the compulsory acquisition cannot be avoided.

The Land Acquisition Act 1960 [Act 486] ("the LAA") is a special Act relating to the acquisition of land which provides procedures for appeal against the quantum of compensation awarded by the Land Administrator.¹ The LAA, however, does not provide an avenue for appeal against the State Authority's decision to compulsorily acquire the land. Consequently, the only way a landowner can attempt to prevent or set aside a compulsory acquisition is to challenge the decision to acquire by way of judicial review.²

Any hope a landowner has of preventing or setting aside a compulsory acquisition will be extinguished once the acquisition is deemed complete and final.

Major steps in an acquisition

The major steps that are required to be carried out in a land acquisition are:

1. The State Authority publishes in the *Gazette* a declaration in Form D³ which sets out the purpose of an acquisition.
2. The Land Administrator serves a notice to attend enquiry in Form E⁴ on the landowner and all interested persons.
3. The Land Administrator concludes the enquiry by making an award for compensation in Form H and has it served on the landowner and all interested persons.⁵
4. The State Authority takes formal possession of land by serving Form K on the occupier or landowner.⁶
5. The Land Administrator is required to make a memorial⁷ on the register document of title to vest the land in the State Authority.

When does an acquisition become final?

In 1991, the High Court,⁸ in determining when the subject lands were deemed to have been acquired for the purpose of ascertaining the apportionment of land compensation between a lessor and a lessee under a lease agreement, held that an acquisition is effective when two things happen; namely, the taking of possession by the issuance of Form K and the vesting of the land by making a memorial on the register document of title. The date of the making the memorial is the date of acquisition.

However, 23 years later in *Ishmael Lim Abdullah*,⁹ the Court of Appeal held that the issuance of Form K vests the property in the State Authority and that the requirement for the endorsement of the memorial was a formality.

Recently, in *United Allied Empire*,¹⁰ the Court of Appeal held that the issuance of Form K, which constitutes taking of formal possession, does not vest the property in the State Authority and does not deprive a landowner of having *locus standi* to file judicial review proceedings.

1 Section 37(1)

2 *Chip Ann Realty Sdn Bhd & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2015] 1 LNS 70 (HC)

3 Section 8

4 Section 12

5 Sections 14 and 16

6 Section 22

7 Sections 23 and 66

8 *Hong Lee Trading & Construction Sdn Bhd v Taut Ying Realty Sdn Bhd* [1991] 2 CLJ Rep 722

9 *Ishmael Lim Abdullah v Pesuruhjaya Tanah Persekutuan & Anor* [2014] 7 CLJ 882

10 *United Allied Empire Sdn Bhd v Pengarah Tanah dan Galian Selangor & Ors* Court of Appeal Civil Appeal No B-01(A)-406-12/2015

What happened in *United Allied Empire*

In 2009, as part of its application for a development order for its 26-acre plot of land, United Allied Empire Sdn Bhd (“UAE”), a Chinese-owned development company, offered to alienate 0.85 acres to the Selangor Islamic Religious Council (“MAIS”) to be used as mosque land. After receiving the application, the Selangor government used its powers under the LAA to acquire the entire 26-acre plot, purportedly as mosque land.¹¹

UAE filed an application for judicial review to set aside the acquisition and for the return of the land, alleging various instances of abuse of powers and accused the Selangor religious authorities of trying to build a land bank by acquiring land cheaply from private landowners. UAE also contended that the land enquiry process had been hastily concluded by the Land Administrator issuing Form K to formally take possession of the land. The Land Administrator did not adduce any evidence of an entry of memorial.

UAE’s application was strongly resisted by MAIS and the Selangor Islamic Religious Department (“JAIS”). The High Court dismissed UAE’s application and UAE appealed to the Court of Appeal.

The Court of Appeal overturned the High Court decision and set aside the acquisition. It held that the issuance of Form K does not vest the land in the State Authority, distinguishing *Ishmael Lim* on the grounds that it did not consider s 66 of the LAA, which states that the land is to vest in the State Authority upon the making of the memorial.

The court also referred to and held that the Circular No 27/2009¹² issued by the Director of Land and Mines (PTG), which emphasised the mandatory requirement for the making of the memorial, is binding and has the force of law.

Attention was also drawn to the Land Administrator’s admission that no Form A (notice that land is likely to be acquired) was issued. The court agreed with UAE’s contention that the provisions of the LAA must be strictly adhered to and reaffirmed the mandatory requirement to issue Form A as held by another Court of Appeal in *Ee Chong Pang*.¹³

Effect of *United Allied Empire*

After a five-year battle, UAE finally recovered its 26-acre plot of land from the state authority. The court not only ordered that the land be returned to UAE, but also directed that the acquiring parties pay damages, and costs of RM100,000 to UAE.

This case is one of only a handful in the past 20 years in which a court has set aside a compulsory acquisition of land by a State Authority.

The decision also upholds the fundamental right to property guaranteed under Article 13 of the Federal Constitution. This case also underlines the importance of landowners acting quickly to challenge any threatened acquisition of land. Once a landowner becomes aware of a threatened acquisition of land, any delay could be fatal to a challenge.

As of the date of publication of this article, the court has not issued written grounds for its decision. The applications by MAIS and JAIS for leave to appeal to the Federal Court are pending.

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11 Warta Kerajaan Negeri Selangor No 2198 — “Permohonan Pengambilan Tanah di bawah Seksyen 3(1)(a) Akta Pengambilan Tanah 1960, untuk Tujuan Tapak Masjid Ar-Ridwan (Lama) Bestari Jaya, GRN 49148 di Lot 682 (kini dikenali sebagai GRN 283902 Lot 682), Mukim Bestari Jaya, Daerah Kuala Selangor.”

12 “Pekeliling Ketua Pengarah Tanah dan Galian Persekutuan Bilangan 27/2009” dated 31.12.2009 — “Mengambil Milik (Taking Possession) Seksyen 18 dan Mengambil Milik Secara Rasmi (Taking Formal Possession) Seksyen 22, Akta Pengambilan Tanah 1960”

13 *Ee Chong Pang & Ors v The Land Administrator of the District of Alor Gajah & Anor* [2013] 2 MLJ 16 (CA)