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Land Acquisition: 3 Key Takeaways from *Amitabha Guha*

The Land Acquisition (Amendment) Act 2016 (**2016 Amendment Act**) came into force on 1 December 2017. One of the few key changes in the 2016 Amendment Act is the reduction of the late payment charges envisaged under sub-sections 29A(5), 32(1), 32(1B) and 48 of the Land Acquisition Act 1960 (**LAA 1960**), from 8% per annum to 5% per annum.

Recently, in *Amitabha Guha*,¹ the Federal Court held that the amended rate of late payment charges under ss 32 and 48 of the LAA 1960² *vide* the 2016 Amendment Act is not retrospective. The Federal Court also decided on a few points of law which drew certainty on the interpretation of certain provisions in the LAA 1960.

Brief facts

The appellants (**landowners**) were the registered proprietors of two contiguous parcels of commercial land adjoining the SILK Highway (**Subject Lands**). The landowners also owned four contiguous parcels of land adjoining the Subject Lands.

In 1999, portions of the Subject Lands were compulsorily acquired for the purpose of constructing the SILK Highway (**Acquired Lands**). Upon conclusion of the land enquiries, the land administrator made two separate awards of compensation to the landowners in respect of the Subject Lands (**Award**). The landowners accepted the Award under protest and filed their objections in Form N. Although Form K³ to take formal possession of the Acquired Lands was issued on 31 May 2000, SILK took physical possession of the Acquired Lands much earlier on 19 September 1999, with the consent of the landowners.

In 2010, the landowners' objections were referred to the High

¹ *Amitabha Guha & Anor v Pentadbir Tanah Daerah Hulu Langat* [2021] 1 LNS 10

² LAA 1960, ss 32 and 48

³ Notice That Possession Has Been Taken of Land

Court, where the Award was increased by RM708,221.66 (**2010 High Court Order**). Dissatisfied, the landowners appealed to the Court of Appeal. At the same time, the landowners also filed an application to refer certain constitutional questions to the Federal Court.⁴ In 2017, the Federal Court ruled on the constitutional questions⁵ and remitted the matter to the Court of Appeal. In view of the Federal Court's decision, the Court of Appeal remitted the matter to the High Court for a rehearing, thereby setting aside the 2010 High Court Order.

After the rehearing, the High Court increased the Award by RM2,411,788.58. Again dissatisfied, the landowners appealed to the Court of Appeal on eight issues, but the appeal was dismissed. The landowners subsequently obtained leave to appeal to the Federal Court on seven questions, which are premised on similar issues raised before the Court of Appeal.

Decision of Federal Court

In allowing the appeal in part, the Federal Court declined to answer two questions that were essentially related to a decision of the High Court on compensation. The Federal Court reaffirmed that a decision of the High Court on compensation is final and non-appealable under ss 40D and 49(1) of the LAA 1960.

The key takeaways from the decision of the Federal Court on the remaining five questions of law can be summarised as follows:

1. Meaning of "possession" under ss 32 and 48 of the LAA 1960
 - (a) Although ss 32 and 48 both deal with late payment charges, they are two distinct provisions:
 - (i) Section 32 provides for late payment charges to be paid by the land administrator on the amount of compensation awarded whereas the late payment charges under s 48 is payable on the excess compensation awarded by the court.
 - (ii) Under s 32, time is calculated from the "due date"⁶ until the time of such payment of the compensation awarded by the land administrator. On the other hand, under s 48, time runs from the date on which the land administrator takes possession of the land to the date of payment of the excess compensation awarded by the court.

⁴ *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 5 CLJ 526; [2017] 3 MLJ 561

⁵ Namely, (i) s 40D(3) and the proviso to s 49(1) of the LAA 1960 and s 68(1)(d) of the Courts of Judicature Act 1964 are not *ultra vires* Art 121(1B) of the Federal Constitution, particularly when read in the context of Art 13 of the Federal Constitution; and (ii) s 40D(1) and (2) of the LAA 1960 are *ultra vires* Art 121 of the Federal Constitution read in the context of Art 13 of the Federal Constitution.

⁶ Defined under s 32(1C): "(1C) In this section "due date" in relation to any land means the date of taking possession of the land or a date three months after the service of a notice under s 16(1) in respect of the land, whichever is the earlier."

- (iii) The late payment charges payable under s 32 is mandatory, but discretionary under s 48.
 - (b) For the purpose of computing late payment charges under s 32 of the LAA 1960, the phrase “taking possession of the land” in sub-section 32(1C) means taking **physical** possession of the land by SILK.
 - (c) For the purpose of computing late payment charges under s 48 of the LAA 1960, the phrase “took possession of the land” means taking **formal** possession of the Subject Lands by the land administrator under s 22 of the LAA 1960.
2. Retrospectivity of the 2016 Amendment Act
- (a) The right to late payment charges under the LAA 1960 is in the nature of a substantive right.
 - (b) The 2016 Amending Act did not expressly exclude the application of s 30(1)(b) of the Interpretation Acts 1948 and 1967, which provides that the repeal of a written law in whole or in part shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law.
 - (c) Therefore, the amendments to ss 32 and 48 of the LAA 1960 *vide* the 2016 Amendment Act are not retrospective so as to deprive the landowners of their substantive right to late payment charges, which were acquired and accrued when they initiated the land reference proceedings in the High Court prior to the amendments coming into force.
 - (d) Such construction is also consistent with the general rule that statutory amendments that affect substantive rights do not operate retrospectively.
3. Meaning of “costs” under ss 14(5) and 51 of the LAA 1960
- (a) Sections 14(5) and 51 deal with costs to be awarded by the land administrator and by the High Court, respectively.
 - (b) Consistent with the principle of equivalence enunciated in *Semenyih Jaya*,⁷ the landowners were entitled to the costs under sub-section 14(5), in addition to the award of compensation. The amount of such costs, which shall be determined by the land administrator, includes the valuation fee and expenses

incurred in the proceedings before the land administrator.

- (c) On the facts of this case, the landowners were not entitled to their costs in the High Court as their claim exceeded 20% of the amount of the court award, as circumscribed by the plain wording of para (c) of subsection 51(1).

Conclusion

This decision upholds and reaffirms the cardinal rule that a special enactment such as the LAA 1960, which deals with the fundamental right to property under Art 13 of the Federal Constitution, should be construed strictly and any doubt should be resolved in favour of the landowner so as to give meaning to the constitutional protection of a person's right to his property.

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If you have any queries pertaining to this update, or on issues relating to compulsory land acquisition, please contact partner [Ho Ai Ting](mailto:hat@lh-ag.com) (hat@lh-ag.com). For information relating to the amendments introduced by the 2016 Amendment Act, please refer to our earlier legal update, "[Land Acquisition \(Amendment\) Act 2016 — Key Changes](#)".

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