

CONSTITUTIONAL LAW

Land acquisition – Award of compensation – Whether adequate – Determination by assessors – Whether judicial power usurped – Whether section 40D Land Acquisition Act *ultra vires* article 121 Federal Constitution – Land Acquisition Act 1960, section 40D – Federal Constitution, article 121

Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Another Case¹

[2017] 5 CLJ 1, Federal Court

Facts The appellant was the registered proprietor of a piece of land which was acquired for the construction of the Kajang-Seremban Highway, while the respondent was the Hulu Langat District Land Administrator (“Land Administrator”). The Land Administrator fixed the compensation sum at MYR20 million but the appellant objected, claiming it was inadequate. The matter was referred to the High Court which held that the appellant was entitled to receive compensation for severance and injurious affection in the sum of about MYR1.16 million. Other claims however were dismissed. An appeal to the Court of Appeal was dismissed. The appellant appealed to the Federal Court and argued that the power to award compensation in land reference proceedings is a judicial power that is vested in the judge only, while the respondent argued that the appointment of court appointed assessors was basically to ensure that compensation is made accurately, quickly and fairly to reflect the true value of the land.

Issue The main issue was whether section 40D² of the Land Acquisition Act 1960 (“the Act”) was *ultra vires* article 121³ of the Federal Constitution.

Held In allowing the appeal and ordering the case to be remitted to the High Court for compensation, the Federal Court held that section 40D of the Act was *ultra vires* article 121 of the Federal Constitution as it ignores the role of Judges as defenders of the Constitution and renders the constitutional guarantee of adequate compensation illusory since judges ‘abdicate’ their constitutional role, as the guarantee of adequate compensation was in the hands of two lay assessors. Hence, the power to award compensation in land reference proceedings is a judicial power that should rightly be exercised only by a judge.

ZUL RAFIQUE & partners
{MAY 2017\01459044}

¹ Before the Federal Court, there was another reference arising from another suit that concerns the same issue.

² *Decision of the Court on compensation.* Section 40D states that the amount of compensation to be awarded shall be decided by two assessors and shall be deemed final.

³ *Judicial power of the Federation.* Article 121 of the Federal Constitution declares that the judicial power to decide a dispute brought before the courts is vested in the courts.