

Tort

Construction of boom gates and guard house across public road – Whether approval from relevant local authority needed – Whether construction approved by relevant local authority – Whether such construction amounted to obstructions in law

Au Kean Hoe v Persatuan Penduduk D’Villa Equestrian

Civil Appeal No.: 02(f)-50-08/2013(B), Federal Court

Facts The appellant was a resident of D’Villa Equestrian Housing Estate (“the housing estate”), with two fully operational boom gates and a guard house constructed on a common entrance and exit road (“the structures”). From January 2008, a monthly security and maintenance charge was imposed on residents, which the appellant failed to pay. The respondent (the housing estate’s Residents’ Association) thereafter issued a circular stating that those who refuse to pay such monthly charges will have to manually open the boom gates without assistance from the security guards on duty. The appellant commenced an action, alleging that the local authority, Majlis Bandaraya Petaling Jaya (“MBPJ”) has no duty to approve construction of the structures, and contended that they were illegal structures that amounted to obstructions in law. The High Court dismissed the appellant’s claim. On appeal, the Court of Appeal held in favour of the respondent and affirmed the High Court’s decision. The appellant appealed to the Federal Court.

Issues The issues before the Federal Court were (1) whether MBPJ is authorised to approve construction of the structures; (2) whether approval by MBPJ was duly obtained; and (3) whether the structures amounted to obstructions in law.

Held The Federal Court dismissed the appeal and held that the local authority has full supervisory authority over all buildings and is therefore the rightful authority to approve the construction of the structures. It was also held that such approval has been obtained by the Developer when the lay-out plan was approved by MBPJ in 2002. The Federal Court also ruled that the structures were duly authorised structures under the Street Drainage and Building Act 1974, Town and Country Planning Act 1976 and the Local Government Act 1976, and cannot therefore be obstructions in law. More importantly, a regulated access to a defined area is not an obstruction in law if it is justified for security purposes.