PLANNING CASE LAW AND LEGAL ISSUES IN ABANDONED HOUSING PROJECTS IN MALAYSIA

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Abstract: The private sector substantially spearheads the housing industry in Malaysia. While the Malaysian Government regulates the industry through laws, one of the laws is the Town and Country Planning Act 1976 (Act 172) (‘TPCA’). Nevertheless, despite there are many housing policies and legal means to ensure housing success, there are still issues plaguing housing industry in Malaysia. For instance, one of the significant problems is the issue of abandoned housing projects. This paper focuses on planning law issues in abandoned housing projects. This paper aims to discuss this issue and suggest particular improvement in the planning law in dealing with abandoned housing projects. The research methodology used is qualitative and legal research methodologies. This paper finds that there are specific provisions under the TCPA and planning law that should be improved to protect the interests of the stakeholders.

1 Introduction

According to the Department of National Housing, Ministry of Urban Well-Being, Housing, Local and Government (‘MUHLG’), abandoned housing project is defined as follows (Ministry of Urban Well-Being, Housing, and Local Government, 2015):

i) Projects that are not completed within or later than the delivery date stated in the first Sale and Purchase Agreement and no significant activity is noticed at the construction site for six (6) continuous months; or

ii) Petition for winding up has been registered in the High Court under Section 218 of the Companies Act 1965 or other related laws; or

iii) Licensed housing developer who has wound up and placed under Receivership, Liquidator or the Malaysia Department of Insolvency (MdI); or

iv) Licensed housing developer notified in writing to the Housing Controller that they are unable to continue further with the development of the project; and

v) Certified by the Minister of Housing and Local Government under Section 11 (1) (c) of Housing Development (Control and Licensing) 1966 (Act 118) that the housing project is an abandoned project.

The problem of abandoned housing projects is not uncommon in Peninsular Malaysia. This problem has been happening since the 1970s after the Malaysian government introduced the ‘housing democracy.’ Before the 1970s, the duty to provide housings to the citizens fell on the shoulder of the government alone. Today, however, this duty is also shared by the private sectors. This problem is due to the inability of the government to provide sufficient housings to the citizens. Although the housing industry in Peninsular Malaysia plays an essential role in the
development of the nation, supported by dynamic policies and legal means for ensuring its success, the occurrences of abandoned housing project have, hitherto, marred its role towards national development and safeguarding the interests of its citizen purchasers. As a result, many purchasers have become victims of abandoned housing projects.

Various reasons are causing the abandonment, and the significant problems they have produced are also grave. One of the reasons is that there are insufficient legal provisions and protections for avoiding abandonment and in the protection of the interests of purchasers. In the event rehabilitation can be carried out, the ensuing problems caused—pecuniary and non-pecuniary losses, still hitherto become unresolved issues to most of the purchasers and the stakeholders, without any sufficient remedies and measures to address them.

1.1 Causes Leading to Housing Abandonment

Based on the general reading, it is found that relatively, some of the grounds that lead to such a catastrophe in the housing industry are as follows:

1) mismanagement (reckless or calculated) of the developer’s affairs (primarily financial);
2) extravagant dissipation of purchasers’ fund; and,
3) the projects had been undertaken by unqualified developers.

However, according to individual researches made amongst the causes leading to the abandoned housing projects in Peninsular Malaysia are (Dahlan, 2011).

1) The absence of a better housing delivery system such as the ‘full build then sell’ system;
2) No mandatory legal requirement for obtaining housing development insurance imposed on the applicant developers, by the MUHLG, as a condition precedent for the approval of the application for housing developer’s licence; and,
3) No specific legal provisions governing the rehabilitation schemes, perpetuating abuses and misuses of power and authority by the rehabilitating parties to the detriment of the purchasers.

1.2 Grievances and Troubles Faced By Purchasers in Abandoned Housing Projects in Peninsular Malaysia

There are various grievances and problems faced by the purchasers if the housing development projects are abandoned. For example, the grievances are:

1) The purchasers are unable to get vacant possession of the units on time as promised by the vendor developers;
2) The construction of the houses are terminated or partly completed resulting in them to be unsuitable for occupation, mostly for a long time, unless the units can expeditiously be revived;
3) In the course of the abandonment of the project, purchasers still have to bare all and keep up the monthly instalments of the housing loans repayable to their respective
end-financiers. Otherwise, the purchased lots being the security for the housing loan would be sold off and with the possibility of the borrower purchasers be made bankrupts by their lender bank;

1.3 Statistics on Abandoned Housing Projects

Table 1.1: Status Overall of Abandoned Housing Projects, 2017

<table>
<thead>
<tr>
<th>Status</th>
<th>No. of Projects</th>
<th>No. of Housing Units</th>
<th>No. of Purchasers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Plan</td>
<td>47</td>
<td>7,694</td>
<td>5,334</td>
</tr>
<tr>
<td>Under rehabilitation</td>
<td>15</td>
<td>4,201</td>
<td>3,004</td>
</tr>
<tr>
<td>Completed projects</td>
<td>192</td>
<td>52,745</td>
<td>35,348</td>
</tr>
<tr>
<td>Total</td>
<td>254</td>
<td>64,640</td>
<td>43,686</td>
</tr>
</tbody>
</table>

Source: Division of Rehabilitation of Abandoned Projects, 2017

Table 1.1 above shows that there are about 254 projects which are categorised as abandoned housing projects in Peninsular Malaysia, involving 64,640 housing units and 43,686 purchasers.

Table 1.2: Statistics of Abandoned Housing Projects According to States, 2017

<table>
<thead>
<tr>
<th>States</th>
<th>No. of Projects</th>
<th>No. of Housing Units</th>
<th>No. of Purchasers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johor</td>
<td>44</td>
<td>8,839</td>
<td>5,807</td>
</tr>
<tr>
<td>Kedah</td>
<td>14</td>
<td>2,097</td>
<td>1,228</td>
</tr>
<tr>
<td>Kelantan</td>
<td>19</td>
<td>1,961</td>
<td>1,662</td>
</tr>
<tr>
<td>Melaka</td>
<td>8</td>
<td>1,503</td>
<td>1,072</td>
</tr>
<tr>
<td>Negeri Sembilan</td>
<td>25</td>
<td>4,340</td>
<td>3,110</td>
</tr>
<tr>
<td>Pahang</td>
<td>17</td>
<td>3,458</td>
<td>2,594</td>
</tr>
<tr>
<td>Perak</td>
<td>18</td>
<td>2,327</td>
<td>1,407</td>
</tr>
<tr>
<td>Perlis</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Pulau Pinang</td>
<td>14</td>
<td>6,660</td>
<td>3,715</td>
</tr>
<tr>
<td>Selangor</td>
<td>82</td>
<td>29,483</td>
<td>20,788</td>
</tr>
<tr>
<td>Terengganu</td>
<td>4</td>
<td>340</td>
<td>293</td>
</tr>
<tr>
<td>WP Kuala Lumpur</td>
<td>9</td>
<td>3,632</td>
<td>2,010</td>
</tr>
<tr>
<td>Total</td>
<td>254</td>
<td>64,640</td>
<td>43,686</td>
</tr>
</tbody>
</table>

Source: Division of Enforcement, Department of National Housing

Table 2.1 illustrates the total number of abandoned housing projects, number of housing units and purchasers for all states in Peninsular Malaysia.
2 Planning Law Issues, Cases and Discussion

Some of the practices of the local and planning authorities who are responsible for issuing the planning permission may have caused unreasonable difficulties to developers. For example, the authorities may impose certain unfair conditions, at the very last minute nearing the completion of the project or in the middle of the development, as condition precedent for the issuance of CF or Certificate of Completion and Compliance (‘CCC’), whereas these conditions might not have been stipulated earlier for immediate action and due notice of the developers. Taman Padang Tembak, Lot No. 688, T.S. 2, Mukim 16, North East District (NED), Pulau Pinang is an example, where the local planning authorities had imposed certain unwarranted conditions. This problem happened, because the local planning authorities had amended the approval of specific plans made earlier, right in the course of construction of the housing units and that new conditions had to be complied with by the developer or otherwise CF would not be granted. This issue would certainly, cause many difficulties, wasting time and affect monetary capability of the developers. This similar catastrophe also appears in case law--

In Bencon Development Sdn Bhd v. Majlis Perbandaran Pulau Pinang & Ors [1999] MLJU 91 (High Court of Malaya at Penang), the applicant developer intended to erect five blocks of 19-storey (720 units) of medium cost flats on Parcel 1A and 24 units of two-storey shop houses and one block of 16-storey (344 units) low cost flats on Parcel A2 on part of Lot 2366, Mukim 12, South West District, Pulau Pinang. The applicant developer applied for planning permission to the respondent. The respondent being the planning authority processed the proposed project with a comment that ‘the existing bridge crossing Jalan Relau on the northern part of the land should be widened according to the JKR’s conditions.’ The plaintiff applicant did not satisfy this condition and appealed to the second Defendant – the JKR. The defendants refused the appeal. Later the plaintiff applicant amended the application for planning permission as required, and the same condition was endorsed on the layout plan. The first defendant (MPPP) approved this second application but subject to some conditions, inter alia, ‘should comply with the requirements of water authority, Tenaga Nasional Berhad (TNB), JKR, Jabatan Pengairan dan Saliran (JPS), Fire and Rescue Department (BOMBA), Syarikat Telekom Malaysia and MPPP before the building plan is approved’. The planning permission was renewed four times. Later, the plaintiff-applicant appealed to the Appeal Board according to section 23 of the Town and Country Planning Act 1976 (Act 172) on the ground that the condition to widen the bridge as required in the planning permission was unfair and had caused grievances to them. However, their appeal was dismissed as the appeal was filed out of time, and there was no leave to appeal beyond the required time. After six months of this decision, the plaintiff-applicant filed the originating summons in the High Court, applying, among other things, the condition prescribed by the Defendants is ultra vires Act 172. The High Court of Malaya at Penang dismissed the summons. This dismissal was made on the ground that there was no leave to appeal to the High Court within six weeks from the date of the decision of the Appeal Board. The summons was
filed beyond limitation period of thirty-six months as required under the Public Authorities Protection Act 1948, the plaintiff applicant had breached the doctrine of laches, and that summons was estopped due to the doctrine of *res judicata*.

In *Tropiland Sdn. Bhd v. Majlis Perbandaran Seberang Perai* [1996] 4 MLJ 16 (High Court of Malaya in Penang), and *Majlis Perbandaran Seberang Perai v. Tropiland Sdn. Bhd.* [1996] 3 MLJ, 94; [1996] 3 CLJ 837 (Court of Appeal at Kuala Lumpur), the local authority rejected the application of the applicant developer for the CF. This was because the applicant developer failed, *inter alia*, to construct the perimeter drain along the eastern and southern boundary of the land on which the completed building was erected, pursuant to the earthworks plan (for the purpose of carrying the earthworks on the project site required by section 70A(1)(2)(3) of the SDBA). However, there was no such requirement (perimeter drain) in the amended layout plan (to get planning permission, which is governed by TCPA). However, according to the Court of Appeal on appeal by Majlis Perbandaran Seberang Perai (MPSP), MPSP had discretionary power to issue CF pursuant to by-law 25(1) of the UBBL. In the issuance of CF, MPSP had the right to impose conditions pursuant to the TCPA and the SDBA. Thus, in granting CF, requirements imposed by these two legislations (TCPA and SDBA) have to be complied with by the applicant-developer. In other words, the requirement for construction of the perimeter drain, although not having been provided in the amended layout plan (for planning permission), would still be required for the grant of CF, as the earthworks plan (for carrying out earthworks) had so provided.

Further, sometimes the problem of abandonment may occur due to the non-compliance by the developers themselves, with the conditions and requirements imposed in the planning permission, failing to obtain the necessary CF or CCC before the project can be considered complete and can be handed over to the respective purchasers. This problem can be seen in Taman Temiang Jaya, Seremban, developed by AMA Construction Sdn. Bhd (File Number: MUHMG/08/824/2732-01) and Wisma Telaga, Butterworth (File Number: MUHMG/08/824/1843). Similar is the case in *Syarikat Chang Cheng (M) Sdn. Bhd v. Pembangunan Orkid Desa Sdn. Bhd.* [1996] 1 MLJ 799, where there was an order from the local authority for the developer to stop the development work, due to the non-compliance with the conditions imposed by the authority.

On other occasions, abandoned housing projects might have been caused due to the problem of illegal squatters who refused to leave the project sites. The refusal of the illegal squatters is, usually, due to their dissatisfaction with the amount of compensation offered by the developer and the costs and conditions of the relocation. The planning permission issued stipulated that any development on the land had to consider the fates of the squatters residing on the said land and to pay compensation and provide certain facility and monetary support for their removal (File Number: PNSB 2/72 Jld II). These squatters might have been residing on the sites of the projects for years. Squatter residents have indeed become one of the stumbling blocks to developers if it is not addressed earliest possible. This can be seen in Taman Yew Lean, Lot Number 664, Section 2, North East District, Pulau Pinang, developed by (Yew Lean Development Sdn. Bhd) (File number: MUHMG/08/824/365), Taman Han Chiang, Lot Number 2343 PB6, North East District, Pulau Pinang (developed by Lam Chew Development Sdn. Bhd.) (File numbers: 340/D/(547)/E; MUHMG/BL/19/547-2), Taman Padang Tembak, Lot No. 688,
Concerning the comments and approval from certain technical agencies, before the planning permission could be issued, certain legal problems may also occur. These technical agencies include, Department of Town and Country Planning (‘JPBD’), Public Works Department (‘JKR’), Department of Water and Irrigation (‘JPS’), Tenaga Nasional Berhad (‘TNB’), TM Berhad (‘TM’), State Water Authority, Land and District Administrator, Fire and Rescue Department (‘Jabatan Bomba dan Penyelamat’), Department of Sewerage Services (‘JPP’), Department of Education, Department of Environment (‘JAS’) etc. This problem can be illustrated in Taman Cemerlang, Lot Number 3254, Mukim 13, Lebuhraya Thean Teik, Bandar Air Itam, NED, Pulau Pinang (File number: MUHLG/08/824/7347-I), where TNB had required the developer to provide an area of land of 2 acres for the erection of a sub-power station by TNB. Due to this new requirement, the developer had to incur additional costs. However, this requirement had not been stipulated earlier. Because the developer did not want to have further problems with the authorities, they, finally managed to provide the land after purchasing it from the neighbouring landowner, at a very substantial price to erect the sub-power station on it, complying with the direction of TNB. However, after the provision of this requirement had been met, TNB aborted the direction. This had cost, the developer, substantial expenditure and incurred time on the part of the developer, thus resulting in the abandonment of the project. It appears therefore that the requirements imposed by certain technical agencies were not compatible with the principle that they (the requirements) must be fair and reasonable as laid down by the High Court in Tekali Prospecting Sdn Bhd. v. Tenaga Nasional Bhd & Anor [2002] 1 MLJ 113.

Certain other new technical agencies are also relevant and need to be included in the list of such technical agencies if it is expedient to do so. An example is the Department of Minerals and Geoscience, which will be responsible for looking into the land, location, and geography of the project site to confirm that the land and the site is fit and suitable for development within certain projected costs of development. This is to avoid future land erosion, landslide and to avoid any further cost and work to extract hidden hard rocks/granite and unwarranted soil structures (such as slime) which if not correctly addressed may lead to abandonment of the projects. This is evident in Taman Villa Fettes, Lots 141 and 3622, Mukim 18, NED, Pulau Pinang. In this project, it was found that the project had to be abandoned because the developer had incurred substantial expenditure to extract and remove hidden hard rocks/granite in the soil of the project site (File numbers: MUHLG/08/824/63 97-I, Jld 2; MUHLG/BL/19/6397-I). These additional costs and problem were unforeseen matters and not within the developer’s earlier anticipation.
Similarly, this was also the case for Taman Harmoni, Lot 82, Mukim of Cheras, District of Hulu Langat, Selangor (the case study for this thesis), where the developer had to incur additional costs of removing slime soils and replacing them with suitable soils and had to carry out substantial piling works to stabilize the soil structure of the project land (File number: MUHLG/08/824/6037-1). Similar too was the case for Taman Dayang, Mukim Kuah Langkawi (developed by INI Holding Sdn. Bhd.) and Taman Perwira, Jerantut, Fasa II, developed by Yee Hoong Loong Corporation Sdn. Bhd (File number: MUHLG/08/824/3947-5), where the purported housing development project could not be proceeded with, as beneath the project land there was hard granite and geotechnical soil problems resulting in impossibility of carrying out the piling works, earthworks, excavation, foundation works and erection of the purported house buildings (File number: MUHLG/08/824/4285-1). Unfortunately, the Department of Minerals and Geoscience is not included in the list of the external technical agencies to get their feedback and comments over any land and soil structure involved in any proposed development.

In the alternative, JAS (Department of Environment) should at least be consulted to look into environmental aspects of the purported project land and location. In this respect, the developer has to prepare the Environmental Impact Assessment Report (‘EIA report’) for the project to be submitted to the Director General of the Department of Environment. Nevertheless, the problem is that to warrant the preparation of the EIA report, the housing project must at least cover an area of 50 hectares or more. Thus, if the area for the housing project is less than this measurement, then, it is not an obligation on the part of the developer to provide the EIA report.

Regarding the rehabilitation of the abandoned housing project, the rehabilitating parties may have to get planning permission from the local planning authority as well, on the ground that the earlier planning permission may have lapsed, pursuant to section 24(1) of the TCPA. However, in the event provisions in section 25 TCPA (Revocation and modification of planning permission and approval of building plans) are triggered, the rehabilitating parties need to apply for new planning permission or the previously approved planning permission, or the previous building plan has to be modified or amended. This happens when it appears necessary for the Local Planning Authority, for the sake of public interest, to revoke or modify the prior planning permission or approved building plan (Section 25(1) of the TCPA). Nevertheless, the local planning authority would still have absolute discretion to revoke and modify the conditions of the planning permission earlier granted. This can be illustrated in the rehabilitation of an abandoned housing project--Taman Yew Lean, Lot No. 664, Section 2, NED, Pulau Pinang, where the rehabilitating parties, funded by a soft loan from Tabung Pemulihan Projek Perumahan Terbengkalai, Bank Negara (‘TPPT’) had succeeded in their application to Majlis Perbandaran Pulau Pinang (‘MPPP’) to allow them to sell 30% of the low-cost-houses at the price of more than RM 25,000.00, in order to facilitate the rehabilitation scheme and to reduce costs and expenditure (File number: MUHLG/08/824/365).

Finally, there is nothing in the National Physical Plan, Structure Plan and Local Plan that emphasize and consider ways to face and eliminate problems relating to abandoned housing projects (Saidatul Akmar Mohamed, 7 August 2006).

Similarly, this catastrophe has not yet been sufficiently considered and given due and appropriate weight by the National Physical Planning Council, Director General of Town and Country Planning, Malaysia.
Planning, State Authorities, Regional Planning Committee, State Planning Committee nor the Local Authorities.

The duty to rehabilitate abandoned housing projects falls under the shoulder of the Ministry of Urban Wellbeing, Housing and Local Government (MUHLG), not the state government. The State Government, through State Authority and state’s agencies, only help MUWHLG to rehabilitate the abandoned housing projects (Personal communication with Tuan Haji Muhammad Aroff Darus, Secretary of Housing Division, Kedah State Secretary, Alor Setar, 26th December 2017). This help includes loosing certain stringent conditions imposed by the planning authority and building authority to ensure rehabilitation of the abandoned housing project is smoothly done, provided this is within the legal perimeter. Examples are the requirement to give a certain number of units of low-cost houses, number of building stairs for fire and rescue department, number of parking lots, size of an access road, fire and rescue department’s requirements, access road buffer zone, requirements of CCC. Nonetheless, the power of the State Authority to lessen the stringent conditions is still subject to the power that is prescribed by the law; for example, the SDBA, NLC, and UBBL.

Further, the planning authority – Department of Town and Country Planning (JPBD) does not have any specific policy to prevent and deal with abandoned housing projects and their issues, except with the establishment of ad hoc committee (Personal Communication, Abdul Talib, 4th January 2018).

The issue of the superiority of the land authority and state authority to undermine the function and role of the planning authority pursuant to section 108 NLC may also cause abandoned housing projects. However, according to Mr Azmin Zainul Abidin land officer of Kota Setar Land Office said that this is minimal and the probability is slim in Kedah. Nonetheless, this issue may happen that can lead to housing abandonment. He said, in respect of Kedah, in case the technical agencies do not support any development application by housing developers, the State Authority will not approve the purported application. In Kedah, if there is an application to develop states’ land, the development application to develop the land by way of alienation must first be examined by UPEN (Unit Pembangunan Ekonomi Negeri). UPEN will form a technical committee to examine the proposal. They will assess the viability of the proposed project. This will lessen any problem later that may befall the purported projects (Personal Communication, Azmin Zainul Abidin, 3rd August 2017).

According to Asmahan Mokti, abandoned housing projects may occur due to the wrong decision made in issuance of Planning Permission. For example in Sungai Lalong, at the back of SP Saujana at Sungai Petani, Kedah, there is a project consisted of a low-cost flat of five storeys without lift provided in the storeys. The planning permission did not provide the provision of lift for the five storey building or less. This had discouraged the public from purchasing the flat. The project became abandoned because of a lack of purchasers as the developer could not capitalise on purchasers’ money. According to Asmahan, at that time, the Development Plan did not require the provision of lift for five or lesser storey residential building. However, after the new government of Kedah came in, under the administration of Tan Sri Azizan, the State Authority required that all storey building must be provided with lifts (Personal Communication, Asmahan Mokti, 29 March 2018).
According to Abdul Ghani Osman, an officer in Majlis Bandaraya Alor Setar, abandonment of housing projects may also occur due to the change of the conditions of the Planning Permission. As the new conditions are burdensome to the developer, the developer failed to comply with them. As a result, the projects became abandoned as the CF or CCC could not be issued. For an example in Alor Setar, some of the developers delayed fulfilling the conditions of TNB within two years of the planning permission granted. Only after two years, the developer wished to comply. However, TNB said the developer was delayed to comply with their requirement and imposed a new condition that the developer must erect electric substation on developers’ owned costs. The developers admitted that they could not comply with the new condition and this led to the abandonment. MBAS would only assist the developers concerned in amending the electrical plan and by approving it. However, the funds to erect the electric substation would be solely borne by the developers themselves.

Similarly, the situations apply to Syarikat Air Darul Aman - SADA (water authority) who requires developers to provide water tank and Indah Water Konsortium – IWK (sewage authority) who requires the provision of sewage facility. According to Abdul Ghani Osman the new condition is not from MBAS but the technical agencies such as TNB (electric authority) and SADA (water authority). Thus, MBAS as the planning authority should not be blamed. In some situations, earlier conditions are changed as the developers have changed and amended the earlier plans. Thus, the developers should bear the costs of complying with the new conditions. About 10% of the new housing development projects faced this problem in Alor Setar (Personal Communication, Abdul Ghani Osman, MBAS, 29 November 2017).

It is submitted that the decisions of the planning authority issuing planning permission can be challenged if it is proven that the decisions were made not in accordance with the law as happened in Datin Azizah bte Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors and Another Appeal [1992] 2 MLJ 393 (Supreme Court at Kuala Lumpur). In this case, the planning authority failed to give the right to the adjoining landowners to develop the land that was being subject to the planning permission. This requirement was spelt out in the Planning (Development) Rules 1973, Emergency (Essential Powers) Ordinance No 46 of 1970, the City of Kuala Lumpur (Planning) Act 1973 and the Federal Territory (Planning) Act 1982.

In Mayland Valiant Sdn Bhd v Majlis Perbandaran Subang Jaya [2018] 4 MLJ 685 (Court of Appeal at Putrajaya), the local planning authority (MPSJ) was found to have wrongly acted against the defendant applicant developer for imposing a condition of hotel suites not for sale to public in the planning permission that fell under the jurisdiction of the Ministry of Urban Wellbeing, Housing and Local Government (MUHLG) to impose. The plaintiff local authority sought, among other things, the following reliefs:

1) a declaration that the planning permission dated 5 October 2010 together with the Layout Plan No MPSJ.PS. 260/1/530 Jld 3(40) granted by the plaintiff to the defendant is meant for the use of hotel only;
2) a declaration that the defendant does not have valid planning permission as at 5 October 2011 in respect of the following:
   (i) to build an addition to the existing hotel building;
(ii) to build two blocks 17 storey hotel suite (1,989 rooms) building with lobby;
(iii) to build one storey recreational space and swimming pool;
(iv) to build one story basement car park; and,
(v) to build a five-storey car park on the said Lots 4244 and 4245.

3) a declaration that the Building Plan No MPSJ/BGN/KW/A-6/162 approved on 28 December 2011 by the plaintiff is ultra vires, invalid, unlawful and cannot be relied upon by the defendant under any circumstances.

The Court of Appeal held that the defendant applicant developer had complied with the planning permission and the approved building plan. The legal suit and application of the plaintiff local authority were against the rule of legitimate expectation, equity and estoppel disfavouring the defendant applicant developer.

3 Recommendations and Conclusion

The planning authorities in Peninsular Malaysia should apply multi-criteria evaluation and multi-criteria decision making (MCDM) in the planning process involving housing development, recognise factors leading to housing abandonment and provide countermeasures for addressing the same and its consequences. So far there is none, in the development plan, especially the Local Plan, providing the multi-planning-criteria for housing development such as measures to avoid and to settle problems of abandoned housing projects and its consequences. Thus, multi-planning-criteria development plan should be expeditiously gazetted to avoid any ad hoc planning. Even though there is a dual administration of State Authority and planning authority, which has contributed to the inefficiency and ineffective control of land uses, alienation and subdivision of land and planning control, any problem emanating from this, can at least be minimised, if not eliminated, by way of better integration and coordination between the authorities—the State Authority, planning authority, building authority, housing authority (MUHLG) and the other relevant technical agencies. EIA report should also be submitted by the applicant developer according to the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 (P.U.(A) 362187) of the Environmental Quality Act 1974, irrespective of the measurement or size of the housing project. For this purpose, such an amendment has to be made to item 7 of the Schedule Order to the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987 of the Environmental Quality Act 1974 (Act 127). Even the current respective states’ Structure Plans and Local Plans too do not provide factors leading to housing abandonment and do not provide measures and methods to solve the problem and its ensuing consequences and losses. In the absence of the gazetted development plans, it is a discretionary practice of the planning authority, to refer to certain relevant technical agencies for comments and approval of any purported application for planning permission to undertake housing development. However, this practice has yet been to be put into the mandatory provisions of the Town and Country Planning Act 1976 (‘TCPA’). The absence of such a mandatory statutory provision may lead to the local planning authority not referring to them for approvals or views or setting aside their conditions, views and approvals/disapproval. The technical agencies include the JPBD, Department of Public Works (‘JKR’), JPS, Sewerage Service Department (‘JPP’), JAS (in term of the suitability project
Thus, the proposed provision should read: Addition to Section 22(2) of the TCPA

'In dealing with an application for planning permission, the local planning authority
shall take into consideration...

a) the necessary views of the technical agencies '(emphasis added).

The word 'technical agency' should also be interpreted and inserted into section 2 of the TCPA as follows:

Addition to section 2 of the TCPA 'Technical agency' means any relevant
authority which shall be consulted for necessary views, insofar as the local
planning authority deems necessary, for the purpose of issuing any planning
permission by the local planning authority".

The planning permission and all the conditions stipulated should be made absolute and not be
subject to variation from the date of the issuance, during the course of construction, development
and rehabilitation of the project until the date of the application of CF or CCC by the qualified
persons/Principal Submitting Person ('PSP'). This is to avoid any possible problems to the
developer, as evident in both case studies, which had led to abandonment, unless the planning
authority and the technical agencies agree to bare all the ensuing costs as a consequence to any
change or variation made by the developers.

Therefore, a new provision should be inserted into section 22 of the TCPA to the effect of the
following:

Addition to Section 22(7) of the TCPA:

'The conditions for the planning permission so granted, shall be irrevocable
and shall not be subject to any variation unless the local planning authority or
the technical agencies, as the case may be, shall bear all the costs and expenses
to be incurred by any applicant consequent to the carrying out of the required
variations except as otherwise provided in this Act'.

Similar should be the case for the conditions of the approved building plan and other plans. To
effect this suggestion, a new supplemental provision should be inserted into section 70 of the
SDBA, viz clause 18A, which reads:
Addition to section 70 of the SDBA i.e. section 70(18A):

'The plans so approved and the conditions so imposed by the local authority or the technical agencies, shall be irrevocable and final for the purpose of issuance of certificate of completion and compliance, pursuant to this Act or any By-laws made thereunder and if later in the event, there is any variation in the plans or conditions for the issuance of the said certificate, required by the local authority or the technical agencies, as the case may be, the local authority or the technical agencies concerned shall make good any losses incurred as the result of such required variation'

Finally regarding the human resource, inefficient administration and logistics problems, it is suggested adequate priority, administrative revamp and monetary provisions should be provided by the State and Federal Governments to ensure the efficiency of the local authority and the technical agencies machinery.

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