

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM  
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA  
[PERMOHONAN SEMAKAN KEHAKIMAN NO.: BA-25-124-  
11/2019]**

**Dalam perkara pendengaran  
dalam tribunal pengurusan strata  
No. Tuntutan B-21987/19  
bertarikh 24 haribulan September  
2019**

**Dan**

**Dalam perkara Award selepas  
Pendengaran No. Tuntutan: B-  
2198-7/19 Dalam Tribunal  
Pengurusan Strata yang  
diserahkan pada 24 haribulan  
September 2019**

**Dan**

**Dalam Perkara Permohonan oleh  
Pemohon untuk Suatu Perintah  
Certiorari dan suatu perintah  
mandamus terhadap Award  
Tribunal yang diserahkan selepas  
Pendengaran Dalam Tribunal  
Pengurusan Strata No. Tuntutan:  
B-2198-7/19 pada 24 haribulan  
September 2019**

**Dan**

**Dalam perkara Seksyen 25(2)  
Akta Mahkamah Kehakiman 1964**

**Dan**

**Dalam perkara Perenggan 1  
Jadual kepada Akta Kehakiman  
1964**

**Dan**

**Dalam perkara Seksyen 44 Akta  
Relif Spesifik 1950**

**Dan**

**Dalam perkara Seksyen 121 Akta  
Pengurusan Strata 2013 (Akta  
757)**

**Dan**

**Dalam perkara Aturan 53  
Kaedah-Kaedah Mahkamah 2012**

**Dan**

**Dalam perkara Aturan 92 Kaedah  
4 Kaedah- Kaedah Mahkamah  
2012**

**ANTARA**

**CAROLINE PHILOMENA GOMEZ****(No. K/P: 600821-10-5766)****... PEMOHON****DAN****1. TRIBUNAL PENGURUSAN STRATA, PUTRAJAYA****2. PERBADANAN PENGURUSAN JAYACOURT****... RESPONDEN-  
RESPONDEN****JUDGMENT****The Applicant's case**

[1] The applicant is the owner of an apartment unit known as No. 2B- 05-18, Pangsapuri Jaya, Jalan Ilham U2/14, Taman TTDI Jaya, Shah Alam (“the said unit”).

[2] The said unit is under the management of the 2<sup>nd</sup> respondent, a management corporation that was established in 2013. The 2<sup>nd</sup> respondent had taken over the management of Pangsapuri Jaya (“the said apartment”) from the TTDI Jaya Joint Management Body (“JMB”).

[3] Sometimes in 2004, the JMB had filed an action against the applicant at the Shah Alam Magistrates Court vide case no. 72-7439-04 (“Suit 7439”) claiming for a sum of RM19,765.25 being the outstanding maintenance fees in respect of the said unit.

[4] However, on 23.5.2006, the 2<sup>nd</sup> respondent had withdrawn Suit 7439 against the applicant after an amicable settlement. It is the

applicant's case that part of the terms and conditions of the said withdrawal of Suit 7439 was that the 2<sup>nd</sup> respondent agreed to waive the maintenance fees allegedly owed by the applicant. It is also part of the amicable settlement that the JMB would repair the said unit's leakages and other defects.

[5] The JMB also agreed to send a workman to make good the defects of the said unit and had asked the applicant to pay an amount of RM5,000, which the applicant paid on 16.2.2013.

[6] When the 2<sup>nd</sup> respondent took over from the JMB in 2013, the 2<sup>nd</sup> respondent demanded the applicant pay "outstanding maintenance charges" for RM19,294.81 allegedly owing by the applicant. The applicant refused to pay the said sum on the grounds that (a) the 2<sup>nd</sup> respondent failed to explain as to how the alleged outstanding sum was calculated and (b) or whether the same was part of the amount said to be owed by the applicant to the JMB, the 2<sup>nd</sup> respondent's predecessor.

[7] The said amount of RM19,294.81 is, of course, disputed by the applicant in view of the amicable settlement reached by the applicant and JMB in 2006. Aggrieved by the situation, the applicant wrote to the 2<sup>nd</sup> respondent demanding for the 2<sup>nd</sup> respondent to explain how the said amount of RM19,294.81 was calculated. The letter, which was dated 21.11.2018 *inter alia*, states as follows:

I refer to your statement as 31.8.2018 and would appreciate if the management corporation could provide details on the outstanding brought forward.

[8] Unfortunately, there was no response from the 2<sup>nd</sup> respondent.

[9] It is the applicant's case that she had paid whatever amount outstanding owing to the 2<sup>nd</sup> respondent, including the sinking fund and maintenance, after the 2<sup>nd</sup> respondent took over the management from the JMB.

[10] Due to the non-payment of the alleged outstanding amount, the 2<sup>nd</sup> respondent then filed a claim at the Strata Management Tribunal ("the Tribunal") under regulation 6 of the Strata Management (Strata Management Tribunal) Regulations 2015. In its Statement of Claim, the 2<sup>nd</sup> respondent claimed for RM20,877.57 being inter alia, the management fees from February 2014 to November 2018.

### **At the Tribunal**

[11] At the conclusion of the hearing, the Tribunal had, on 24.9.2019, ordered the applicant to pay the said sum of RM20,877.57 as of 30.11.2018.

[12] Aggrieved by the said decision, the applicant filed an application for judicial review in this Court, *inter alia*, for an order of certiorari to quash the same.

[13] The applicant also seeks for an order of mandamus to refer the matter to be remitted to the Tribunal for its reconsideration.

### **At the High Court**

[14] It is unfortunate that the Tribunal did not furnish the written grounds of its award. I can understand that s. 117(2) of the Strata Management Act 2013 ("SMA") does not make it mandatory for the Tribunal to give its reason for its award in writing. The proposition can be seen in the judgment of the Court of Appeal *Haslinda Hamzah lwn. Kumon Method of Learning Centre* [2006] 2 CLJ 933 CA.

[15] However, the whole idea of a judicial review application, as in this action, is for this Court to determine whether the Tribunal's award is tainted with illegality, irrationality or procedural impropriety.

[16] In doing so, the Court has to look into the grounds behind the award of the Tribunal. Regrettably, no such written reasons were given for its award for reasons known only to the Tribunal. This case is adjourned on many occasions to enable to Tribunal to furnish its grounds.

[17] It never came.

[18] It is as if this Court has to wait for the grounds of the award indefinitely, and I must say, this is not good for good governance and transparency.

[19] When the matter was called for CM on 5.1.2021, my learned brother, Tun Abd Majid J, who heard this case earlier, had directed that the hearing of this application for judicial review is to proceed, with or without the notes of proceedings and the grounds of the award by the Tribunal.

### **The Law**

[20] S. 117(2) of the SMA provides as follows:

The Tribunal shall in all proceedings give its reason for its award in the proceedings.

[21] I have gone through the affidavit in support of the applicant on Encl 3 and there is nothing in the said affidavit that summarised the reasons for the award of the Tribunal.

[22] The same applies to the affidavit in reply of the 2<sup>nd</sup> respondent in Encl 15 (“AIR-15”), which was affirmed on its behalf by Amran bin Md Isa on 15.5.2020. Amran is the chairman of the 2<sup>nd</sup> respondent. In fact, it is quite apparent to me that Amran is not sure as to the actual reasons for the award when he asserted in para 20.4 of AIR-15:

Responden Kedua merizabkan hak untuk memfailkan Afidavit Tambahan setelah menerima Nota Keterangan dan Alasan Penghakiman daripada Responden Pertama.

[23] In the circumstances, we are left in a situation whether the grounds of the award were indeed made known to the parties when the learned President of the Tribunal delivered the decision on 24.9.2020.

[24] There lies the problem.

[25] In *Oxbridge Height Sdn Bhd v. Rozila Binti Rozali* [2010] 1 LNS 1085, the Johor Bahru High Court had the opportunity to discuss the implication of s. 16AA of the Housing Development (Control & Licensing) Act 1966 (“HDA”), which states that:

The Tribunal shall in all proceedings give its reasons for its award in the proceedings.

It was contended by the applicant that the Tribunal had committed an error of law in failing to give effect to s. 16AA of the HDA. It was not disputed that the purported grounds were not dated. In delivering the judgment of the Court, Hue Siew Kheng JC (later J) remarked as follows:

15. After perusal of the submissions of all the parties I am forced to conclude that the award made by the Tribunal in

respect of the respondent's claims for LAD suffers from procedural impropriety and illegality as the Tribunal had failed to comply with the statutory mandatory provision of section 16AA that it has to give reasons for its award.

16. Section 16AA is clear and unequivocal that the Tribunal shall in all proceedings give its reasons for its award in the proceedings. In this case, no reasons have been given.

[26] The same issue arose in *Seraimas Bina Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah Negeri Pulau Pinang & Anor* [2017] MLJU 216, except for the award, no supporting grounds thereof are seen or produced before the Court. Lim Chong Fong, after having referred to the judgment of the learned JC *Oxbridge Height*, held that:

I share Her Ladyship's views and held that the Award herein is bad on the same basis. Put simply, the Award was illegally made.

[27] It can be seen that s. 16AA of the HDA is *pari materia* with s. 117(2) of the SMA.

[28] There is nothing before the Court to suggest that the learned President of Tribunal had adhered to s. 117(2) of the SMA, either by giving oral or otherwise written reasons for his award. Following the proposition stated in *Oxbridge Height* and *Seraimas Bina* which I respectfully agree with, the failure of the learned President to give his reasons to his award is tainted with illegality which is amenable to judicial review.

[29] I am ever mindful that just like the HDA, the creation of the Tribunal under the SMA is to provide for speedy disposal of a dispute.

It is regretted that the said objective cannot be achieved in this case for reasons that have nothing to do with the disputing parties.

[30] I, therefore, order that the said award be set aside.

[31] In view of my finding, I am making these consequential orders:

- (a) The disputes that were referred be remitted to a fresh Tribunal to re-determine the matter in particular:
  - (i) Whether the order made in Suit 7439 includes the amount claimed by the 2<sup>nd</sup> respondent at the Tribunal.
  - (ii) Whether the amount of RM20,877.57 is a fresh claim after the 2<sup>nd</sup> respondent took over the management of the said apartment or the amount owing to the JMB, which had allegedly been settled in Suit 7439.
- (b) I am making no order as to costs.

**Dated:** 31 DECEMBER 2021

**(WAN AHMAD FARID WAN SALLEH)**

Hakim

Mahkamah Tinggi Shah Alam.

**COUNSEL:**

*For the appellant - Renuka Devi Krishnasamy; M/s V Samy Renu & Co*

*For the respondent - Azzan Aznan Abdul Rahim & Nor Mohd Syazwan Che Hasim; M/s Syazwan Hasim & Azeel Eskandar*

**Case(s) referred to:**

*Oxbridge Height Sdn Bhd v. Rozila Binti Rozali [2010] 1 LNS 1085*

*Seraimas Bina Sdn Bhd v. Tribunal Tuntutan Pembeli Rumah Negeri Pulau Pinang & Anor [2017] MLJU 216*

*Haslinda Hamzah lwn. Kumon Method of Learning Centre [2006] 2 CLJ 933 CA*

**Legislation referred to:**

Strata Management Act 2013, s. 117(2)

Housing Development (Control & Licensing) Act 1966, s. 16AA

Strata Management (Strata Management Tribunal) Regulations 2015, reg. 6