

A portrait photograph of a man with a beard and mustache, wearing a dark cap and a dark traditional Malayan robe (jubah). He is looking slightly to the right of the camera. The background is a solid teal color.

Achieving Sustainable Land Development in Malaysia: The Role and Issues in Land Development Laws

Professor Dr Nuarrual Hilal Md Dahlan
ACIS (CGP),(CS),CC
School of Law
Universiti Utara Malaysia



Duty & Responsibility of State

► **Welfare: Article 8(1) FC: Article 8. Equality.**

All persons are equal before the law and entitled to the equal protection of the law.

► **Well-being – Public Good**

► **Safety**

► **Security**

► **Health**

► **Prosperity**

► **Life & Environmental Sustainability**

► **Sustainable Development**

► ***Maqasid al-Shariah (Objectives of the Shariah)***

► **Constitutional Duty – Federal Constitution and State Constitution. Common Law Duty**

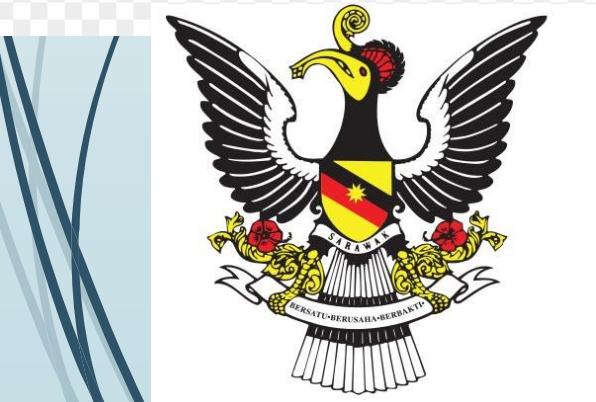
Article 8(1) FC:
Article 8. Equality.
All persons are
equal before the
law and entitled to
equal protection of
the law.





Maqasid al-Shariah (Objectives of the Shariah)

Federal Government & State Government



State Authority



Federal Constitution



Federal Authority



States' Constitution

Disposal of Land & Land Matters



- ➡ State Authority
- ➡ Land Administrator
- ➡ Director of Lands and Mines

Planning Authority, Local Planning Authority, State Planning Authority, State Authority



PLANMalaysia@Kedah
(Jabatan Perancangan Bandar dan Desa Negeri Kedah)

Portfolios **AHLI- AHLI MAJLIS MESYUARAT KERAJAAN NEGERI KEDAH DARUL AMAN**

YAB. DATO' SERI HAJI MUHAMMAD SANUSI BIN MD NOR	YB. TUAH HAJI MOHAMAD YUSOFF @ MUNIR BIN ZAKARIA	YB. MEJ (B) MANSOR BIN HAJI AB GHANI	YB. TUAH HAJI MUHAMMAD RADHI BIN HAJI MAT DIN
MENTERI BESAR KEDAH DARUL AMAN	Pengerusi Jawatankuasa Kerja Raya, Sumber Asli, Bekalan Air, Sumber Air dan Alam Sekitar	Pengerusi Jawatankuasa Perumahan, Kerajaan Tempatan dan Kesihatan	Pengerusi Jawatankuasa Kepengurusan & Kos Sarawak, Belia & Sukan
<ul style="list-style-type: none">• Pengerusi Jawatankuasa Perancang Negeri• Pengerusi Jawatankuasa Hal Ehwal Tanah, Mineral & Geosains• Pengerusi Jawatankuasa Hasil Bumi• Pengerusi Jawatankuasa Kewangan• Pengerusi Jawatankuasa Syarikat Berkaitan Kerajaan Negeri• Pengerusi Jawatankuasa Majlis Tindakan Ekonomi Negeri• Pengerusi Jawatankuasa Pembangunan Kedah 2035• Pengerusi Jawatankuasa Kerjasama Luar	<ul style="list-style-type: none">• Pengerusi Jawatankuasa Kerajaan Tempatan dan Kesihatan	<ul style="list-style-type: none">• Pengerusi Jawatankuasa Pertanian, Perladangan dan Pengangkutan	<ul style="list-style-type: none">• Pengerusi Jawatankuasa Pelancongan, Kebudayaan, dan Keusahawanan
YAB. DATO' HAJI SITI ASAH BINTI HAJI KHAZALI Pengerusi Jawatankuasa Luar Bandar, Kemiskinan dan Pembangunan Insan	YB. MOHD AZAM BIN ABD SAMAT Pengerusi Jawatankuasa Pendidikan, Agama, Komunikasi dan Henerangan	YB. PROF DR. HAIM HILMAN BIN ABDULLAH Pengerusi Jawatankuasa Industri dan Pelaburan, Pengajian Tinggi, dan Sains, Teknologi & Inovasi	YB. DATO' HAJAH HALIMATON SHAADIAH BINTI SAAD Pengerusi Jawatankuasa Kebajikan, Wanita, Keluarga & Masyarakat, dan Perpaduan
YB. DATO' HAJAH HALIMATON SHAADIAH BINTI SAAD Pengerusi Jawatankuasa Kebajikan, Wanita, Keluarga & Masyarakat, dan Perpaduan	YB. DATO' HAJAH HALIMATON SHAADIAH BINTI SAAD Pengerusi Jawatankuasa Kebajikan, Wanita, Keluarga & Masyarakat, dan Perpaduan	YB. DATO' HAJAH HALIMATON SHAADIAH BINTI SAAD Pengerusi Jawatankuasa Kebajikan, Wanita, Keluarga & Masyarakat, dan Perpaduan	YB. DATO' HAJI MOHD SALLEH B. SALDIN Pengerusi Jawatankuasa Pelancongan, Kebudayaan, dan Keusahawanan



**AHLI MAJLIS MESYUARAT
KERAJAAN NEGERI PAHANG**

YAB DATO' SRI HAJI WAN ROSDY BIN WAN ISMAIL
EXCO PERANCANGAN, KEWANGAN, TANAH, SUMBER ASLI, TENAGA & AIR
EXCO PEMBANGUNAN EKONOMI, PERLADANGAN & KOMODITI





**YB DATO' SRI IR
HAJI MOHD SOFI
TAN SRI ABD RAZAK**
EXCO PERTANIAN, INDUSTRI ASAS
TAN, BIOTEKNOLOGI & PENDIDIKAN
NEGERI PAHANG



**YB DATO' SRI
SYED IBRAHIM
SYED AHMAD**
EXCO HAL EHWAH, AGAMA ISLAM,
KEMAJUAN DESA DAN HAL EHWAH
ORANG ASLI NEGERI PAHANG



**YB DATO' HAJI
MOHAMMAD FAKHRUDDIN
MOHD ARIFF**
EXCO KERJA RAYA,
PENGANGKUTAN DAN
TEKNOLOGI HAL NEGERI PAHANG



**YB TUAN IR
RAZALI BIN KASSIM**
EXCO KERJA RAYA,
PENGANGKUTAN DAN
KESIHATAN NEGERI PAHANG



**YB DATO' MOHAMAD NIZAR
DATO' SRI
MOHAMAD NAJIB**
EXCO HAL EHWAH, PERINDUSTRIAN,
SAINS, TEKNOLOGI & INOVASI
NEGERI PAHANG



**YB DATO' SABARIAH
SAIDAN**
EXCO KEBAJIKAN MASYARAKAT,
PENGEMBANGAN WANITA &
KELUARGA NEGERI PAHANG



**YB. TUAN FADZLI
MOHAMAD KAMAL**
EXCO KOMUNIKASI & MULTIMEDIA,
BEJA, SUKAN & BADAN-BADAN
BUKAN KERJAAN NEGERI PAHANG



**YB. ENCIK SIM
CHON SIANG**
EXCO HAL EHWAH PENGGUNA
& SUMBER MANUSIA
NEGERI PAHANG



**YB. CIK LEONG
YU MAN**
EXCO PERPADUAN,
PELANCONGAN & KEBUDAYAAN
NEGERI PAHANG



**YB DATO' AMIZAR
ABU ADAM**
EXCO HAL EHWAH FELDA,
KOPERASI DAN
USAHAWAN NEGERI PAHANG

T • BENAR

www.pahangmedia.my





SENARAI LENGKAP JAWATAN KOSONG MAJLIS PERBANDARAN & MAJLIS DAERAH SELURUH NEGERI

Building Authority

KERJAYA.CO



MAJLIS PERBANDARAN
SUBANG JAYA



**KEMENTERIAN PERUMAHAN
DAN KERAJAAN TEMPATAN**



Housing Authority

Land Development – Housing Development Project



- ▶ Federal Authority
- ▶ State Authority
- ▶ Land Authority
- ▶ Local Planning Authority
- ▶ Technical Agencies
- ▶ Housing Developers
- ▶ Professional Consultants
- ▶ Professional bodies – bar council, Lembaga Arkitek Malaysia LAM, CIDB etc

Land Development – Commercial Plantation

- ▶ Sime Darby Plantation Berhad
- ▶ FGV Holdings Berhad
- ▶ Kuala Lumpur Kepong Berhad (KLK)
- ▶ Kulim (Malaysia) Berhad
- ▶ United Plantations Berhad
- ▶ IOI Corporation Berhad
- ▶ TSH Resources Berhad





Land Development – Industrial Area

Land Development

— Administrative Centre



Land Development – Economic, Industrial and Investment Centres



Malaysia's data centre hotspots



Investment and Establishment of Data Centres by Foreign Investors

- ▶ Google
- ▶ Amazon
- ▶ Oracle
- ▶ 32 data centres were in operation, and 19 data centres were under construction in Malaysia
- ▶ Economic growth but also having side effects
- ▶ high energy consumption, environmental concerns, overreliance on foreign investments, data sovereignty and security risks, uneven development, risk of market saturation, dependence on stable policies and infrastructure, rising property prices, skills gap, and risk of over-dependence on the foreign tech sector and neglecting the development of the local expertise

Biodiversity, Flora & Fauna



Abandoned Housing Projects

- ▶ Government sides foreign investors and local investors.
- ▶ Too much emphasis on investments
- ▶ Neglecting public and consumer protection.
- ▶ “Full sell and build”
- ▶ “Full build then sell”
- ▶ Alienation of Lands issue
- ▶ Issue of unqualified Developers
- ▶ Since 1970s still unresolved.





Landslide, Soil Erosion, Soil Problems & Soil Settlement

Soil Settlement



Soil Erosion



Flood Disasters



Contaminated Water & Rivers





Contaminated soil

Relevant laws & Statutes stop

- ▶ National Land Code (revised 2020) Act 828
- ▶ Town and Country Planning Act 1976
- ▶ Street, Drainage and Building Act 1974
- ▶ Uniform Building By-Laws 1984
- ▶ Town and Country Planning Ordinance 1950 (Sabah Cap. 141),
- ▶ Sabah Land Ordinance (Sabah Cap. 68),
- ▶ Sarawak Land Code (Cap. 81).
- ▶ Local Government Act 1976 (Act 171),
- ▶ Sabah Uniform Building By-Laws 2022 (G.N.L 15 of 2022)
- ▶ Sabah Local Government Ordinance 1961 (No. 11 of 1961),
- ▶ Sarawak Buildings Ordinance, 1994
- ▶ Sarawak Local Authorities Ordinance 1996 (Cap. 20).

Issues in land, planning, building and housing laws

- **Land Authority:** Section 108 NLC, the superiority of the State Authority over planning authority and technical agencies.
- **Land Authority:** No mandatory reference to technical agencies.
- **Planning Authority:** inadequate development plan; development plan is not mandatory for use; it is not mandatory for the planning authority to comply with technical agencies; no big data and data analytics by the agencies; section 108 NLC hurdle.
- **Building Authority:** local and state authority immunity, supervision and verification of building works, enforcement problems.
- **Housing Authority:** affordable houses, abandoned housing projects, quality works. Enforcement problems. No full build-then-sell system. Dominated by investors' wishes.



NOT MANDATORY

References to Planning Authority & Technical Agencies



- ▶ **Alienation** of land under section 76 of the National Land Code ('NLC').
- ▶ **Alienation of Land Below State Land** under section 92C NLC
- ▶ **Temporary Occupation Licence** (ToL) under section 65 NLC
- ▶ **Permit use of air space above State land or reserved land** for the purpose of erecting, maintaining and occupying such *structure/s as may be approved by the SA pursuant to section 75A NLC
- ▶ **Reserving Land for Public Purpose** pursuant to section 42(1)(b) & 62(1) NLC

Planning Authority

- Town and Country Planning Act 1976 (Act 172)
- Federal Territory (Planning Act) 1982 (Act 267)
- Planning Permission
- Development Order
- Certificate of Completion and Compliance (CCC)
- Local Planning Authority
- State Planning Committee
- National Physical Council
- Concurrent list FC
- Development Plan
- Technical Agencies



MAJLIS PERBANDARAN
SUNGAI PETANI



MAJLIS PERBANDARAN
KUBANG PASU



MAJLIS BANDARAYA SHAH ALAM



MAJLIS PERBANDARAN
KULIM

Technical Agencies



JABATAN MINERAL & GEOSAINS MALAYSIA (JMG)



JABATAN KERJA RAYA
MALAYSIA



TENAGA
NASIONAL



JABATAN ALAM SEKITAR MALAYSIA



JUPEM



LEMBAGA
LEBUHRAYA
MALAYSIA



JABATAN LANDSKAP NEGARA



Technical Agencies



PBA

Perbadanan Bekalan Air
Pulau Pinang Sdn Bhd
(475961-X)

Memenuhi segala keperluan bekalan air anda
Meeting all your water supply needs



SADA

SYARIKAT AIR DARUL AMAN SDN BHD
Anak Syarikat Kerajaan Negeri Kedah

 **Air Selangor**

 **SAMB**
SYARIKAT AIR MELAKA BERHAD



SATU
SYARIKAT AIR TERENGGANU SDN.BHD.


SWCorp
MALAYSIA



SAP
Syarikat Air Perlis


SKMM
Suruhanjaya Komunikasi dan Multimedia Malaysia
Malaysian Communications and Multimedia Commission


LEMBAGA AIR PERAK


SAJ




PPSPPA


SAINS
Syarikat Air Negeri Sembilan (SAINS)


PAIP
PENGURUSAN AIR PAHANG BERHAD

- **Grant Lease of State Reserve Land** pursuant to section 63 NLC

Applications for Approval of Surrender and Re-Alienation of Land under section 204D NLC

Variation of Conditions, Restriction in Interests and Categories of Land under section 124 NLC

Simultaneous Application for Subdivision and Variation of Conditions, Restrictions of Interest and Category of Land under section 124A NLC

Grant Malay reservation land under Malay Reservation Enactment F.M.S CAP 142

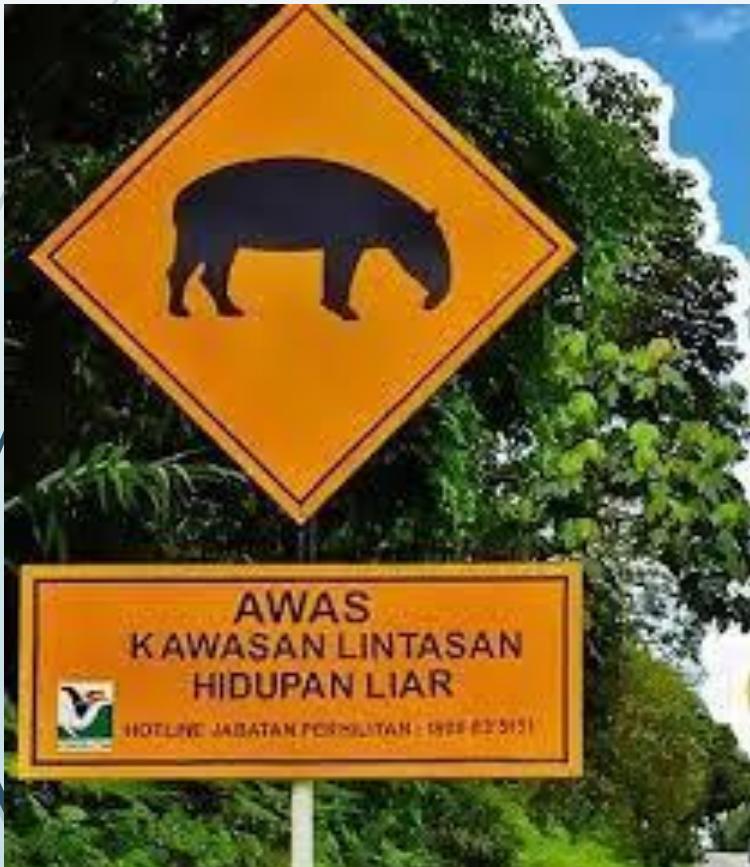
■ **Grant of Railway Land Reserve** under Railways Act 1991 (Act 463)

■ **Grant of Orang Asli Land Reserve** under Aboriginal Peoples Act 1954 (Revised 1974)(Act 134)

NOT MANDATORY **References to Planning Authority & Technical Agencies**



MANDATORY References to Planning Authority & Technical Agencies



- ▶ Simultaneous Application for Subdivision and Variation of Conditions, Restrictions of Interest and Category of Land involving **Estate Board** under section 124A & 214A NLC
- ▶ **Land Acquisition** under section 3A(1)(a)(b)(c) & 7 of the Land Acquisition Act 1960 (Act 146)
- ▶ Application for **Subdivision of Land** under section 137 NLC
- ▶ Application to **Partition of Any Land** under section 142 NLC
- ▶ Application for **Amalgamation of Land** under section 148 NLC
- ▶ Grant of **Wild Life Protection Land** under National Forestry Act 1984 (Act 313)

Superiority and Prerogative Power of the State Authority/Land Authority



- Section 108 NLC
- Case Law

Liability of State Authority/Land Authority



- **Section 22 NLC: mala fide**
- **Section 434 NLC : Liable to pay compensations and damages**
- **Principle of justice and fairness**
- **Principle of equity**
- **Duty to give reason**
- **Duty to observe natural justice**

Section 434 NLC - Determination, and payment, of compensation under this Act.

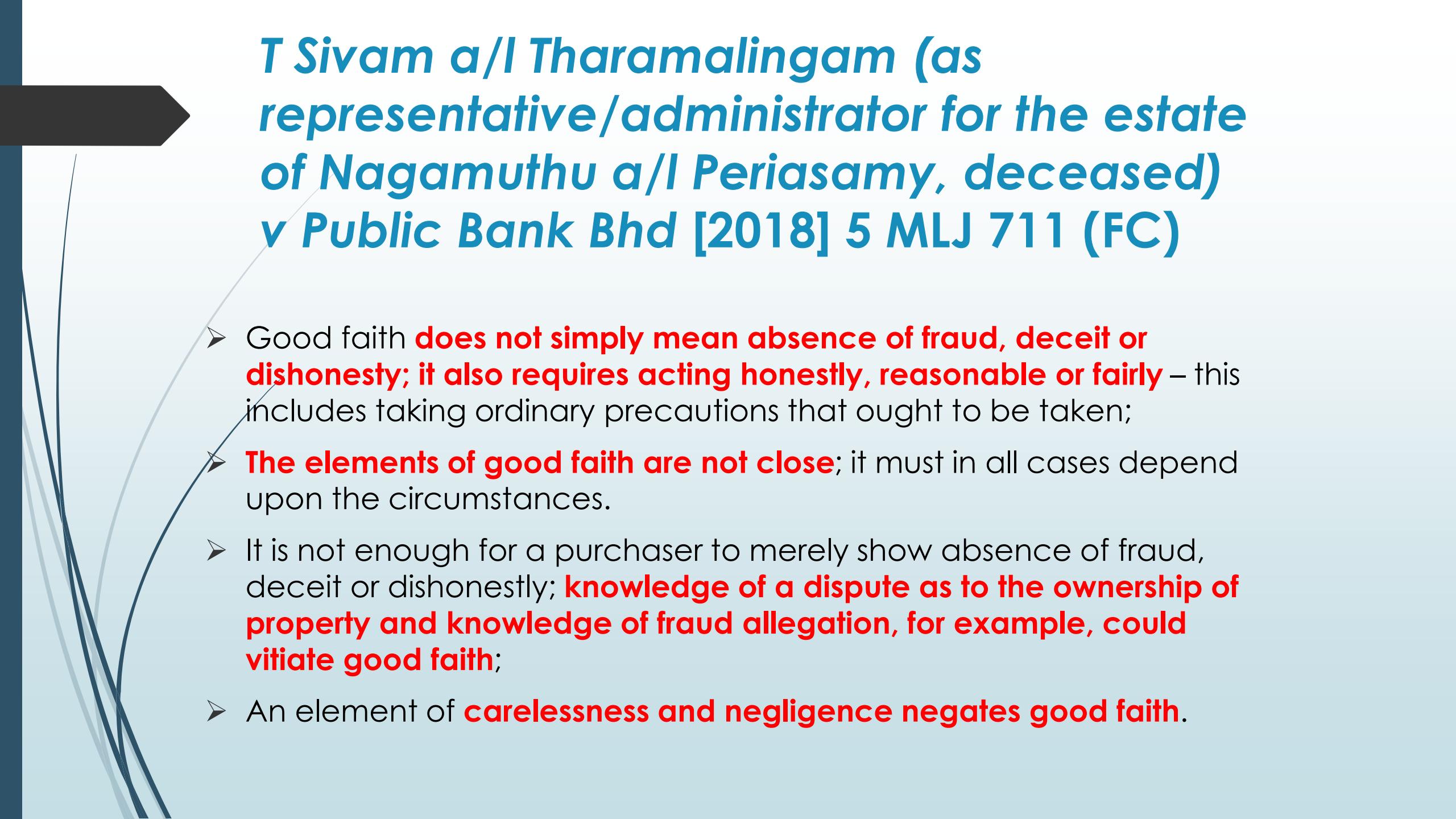
(1) Where, under any provision of this Act, any person or body is entitled in respect of any matter to **compensation** to be agreed or determined in accordance with the provisions of this section, the amount thereof shall be such as **may be agreed between him and the State Director or, in default of any such agreement, determined by arbitration.**



Section 22 NLC



- ▶ **Section 22. Protection of officers.**
- ▶ No officer appointed under this Part shall be liable to be sued in any civil court for any act or matter done, or ordered to be done or omitted to be done, by him **in good faith** and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under this Act.



T Sivam a/l Tharamalingam (as representative/administrator for the estate of Nagamuthu a/l Periasamy, deceased) v Public Bank Bhd [2018] 5 MLJ 711 (FC)

- Good faith **does not simply mean absence of fraud, deceit or dishonesty; it also requires acting honestly, reasonable or fairly** – this includes taking ordinary precautions that ought to be taken;
- **The elements of good faith are not close**; it must in all cases depend upon the circumstances.
- It is not enough for a purchaser to merely show absence of fraud, deceit or dishonesty; **knowledge of a dispute as to the ownership of property and knowledge of fraud allegation, for example, could vitiate good faith**;
- An element of **carelessness and negligence negates good faith**.

Case Law – Prerogative power of the State Authority/Land Authority



- ▶ *North East Plantations Sdn Bhd v. Pentadbir Tanah Daerah Dungun & Anor [2011] 2 CLJ 392 (Court of Appeal at Putrajaya)(alienation of land)*
- ▶ *North East Plantations Sdn Bhd Lwn Pentadbir Tanah Daerah Dungun Dan Satu Lagi [2011] 4 CLJ 729 (Federal Court at Putrajaya)(alienation of land)*
- ▶ *Piagamas Maju Sdn Bhd v Pengarah Tanah dan Galian Negeri Selangor & Anor [2016] 3 CLJ 224 (Court of Appeal at Putrajaya)(alienation of land)*
- ▶ *Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor [2013] 10 CLJ 570 (High Court of Malaya at Shah Alam)(alienation of land)*

**North East Plantations Sdn Bhd
v. Pentadbir Tanah Daerah
Dungun & Anor [2011] 2 CLJ 392
(Court of Appeal at
Putrajaya)(alienation of land)**

- Application for alienation of land
- Land alienated to the applicant but not yet registered
- Later the State Authority revoked the alienation
- Legitimate expectation?
- Revocation was in bad faith?
- Court of Appeal: Appeal dismissed. No legitimate expectation. Title not yet registered into the name of the applicant.



**North East Plantations
Sdn Bhd Lwn
Pentadbir Tanah
Daerah Dungun Dan
Satu Lagi [2011] 4 CLJ
729 (Federal Court at
Putrajaya)
(alienation of land)**

► **Federal Court: Dismissed the appeal.**



**Piagamas Maju Sdn Bhd v
Pengarah Tanah dan
Galian Negeri Selangor &
Anor**
[2016] 3 CLJ 224
**(Court of Appeal at
Putrajaya)**
(alienation of land)



- ▶ Application for alienation of land
- ▶ Land alienated to the applicant but not yet registered
- ▶ Premium & rent paid.
- ▶ Later the State Authority revoked the alienation
- ▶ Revocation was in bad faith?
- ▶ Court of Appeal: Appeal dismissed. No legitimate expectation. Title not yet registered into the name of the applicant.

- ▶ **Ko Seow dan satu lagi lwn Kerajaan Negeri Pahang Darul Makmur dan satu lagi [2020] 7 MLJ 506 (High Court of Malaya at Temerloh)(Land title)**
- ▶ **Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Yong [2016] 6 MLJ 413 (Federal Court at Putrajaya)(land title)**
- ▶ **Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong [2015] 5 MLJ 830 (Court of Appeal at Putrajaya)(land title)**
- ▶ **Shayo (M) Sdn Bhd v Nurlieda bt Sidek & Ors [2013] 7 MLJ 755 (High Court of Malaya at Ipoh) (land title)**
- ▶ **Uptown Properties Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan & Ors [2012] 8 MLJ 713 (High Court of Malaya at Kuala Lumpur)(land title)**

Case Law – State Authority/Land Authority Subject to Law and Justice



Ko Seow dan satu lagi Iwn Kerajaan Negeri Pahang Darul Makmur dan satu lagi [2020] 7 MLJ 506 (High Court of Malaya at Temerloh) (Inaccurate Land title measurement)

- The land office failed to provide issue of land title in the correct measurement to the detriment of the land proprietors.
- The court held that the Land Office was liable in negligence and liable to pay compensation.
- Failure to carry out statutory duty.



**Shayo (M) Sdn Bhd v
Nurlieda bt Sidek & Ors
[2013] 7 MLJ 755
(High Court of Malaya
at Ipoh)(land title)**



- The land office negligently omitted the name of the land proprietor from his rightful and legal issue document of title.
- Negligence & breach of statutory duty.
- The plaintiff was dispossessed of his legal title over a land.
- The plaintiff land was sold to other persons.
- The plaintiff suffered losses.
- The court held that the Land Office was negligent and liable to the plaintiff for the losses.

Uptown Properties Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan & Ors [2012] 8 MLJ 713 (High Court of Malaya at Kuala Lumpur) (land title)

- The land office mistakenly registered a land owned by the plaintiff to third party person
- breach of duty of care.
- Bad faith.
- The plaintiff was dispossessed of his legal title over a land.
- The plaintiff land was sold to other persons.
- The plaintiff suffered losses.
- The court held that the Land Office was negligent and liable to the plaintiff for the losses.



Case Law – State Authority/Land Authority Subject to Law and Justice



- ***Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor [2016] 2 MLJ 1495 (Court Appeal at Putrajaya)(alienation of land)***
- ***Kobchai Sosothikul (Wakil Harta Pusaka Boonsom Boonyanit @ Sun Yok Eng, Simati) v Pengarah Tanah dan Galian, Pulau Pinang [2011] MLJU 167 (High Court of Malaya at Penang)(notification to issue title in continuation)***

Pembinaan Batu Jaya Sdn Bhd v Pengarah Tanah dan Galian, Selangor & Anor [2016] 2 MLJ 1495 (Court Appeal at Putrajaya) (alienation of land)



- ▶ Application for alienation of land
- ▶ Land alienated to the applicant but not yet registered
- ▶ Premium & rent paid; all documents and requirements complied with.
- ▶ Later the State Authority revoked the alienation without giving any reasonable grounds.
- ▶ However, the land was alienated to another person.
- ▶ Revocation was in bad faith?
- ▶ Court of Appeal: allowed the appeal; The Land Office is liable to the applicant plaintiff.

- Thus apart from the principles of case law above, the State Authority and the Land Offices can be held liable for the breach of statutory duty and other breaches they committed to the detriment of the public. In addition, **section 22 of the NLC also states that the land officer can be held liable if they do not act in bona fide manner.**
- **Section 434 NLC further states that in the event that the land office (Land Administrator and State Director of Lands and Mines) are liable to pay compensation for any wrong doing.**

Findings



Findings

Conclusion



- Even though the SA have an absolute power in land matters, **they are still subject to the principle of justice and fairness** in executing their statutory duty in land matters including alienation of lands for example, they are required to follow the views of the technical agencies and the planning authority.
- For otherwise, they can be held liable for the losses and sufferings of the victim parties.



THANK YOU