TANAH OH TANAH : SIRI KE 44

ANTARA KEPENTINGAN INDIVIDU DAN KEPENTINGAN AWAM DALAM PENGAMBILAN TANAH

(BAHAGIAN KEENAM)

10. *PUBLIC PURPOSE* HENDAKLAH MERUPAKAN *PUBLIC PURPOSE* YANG SEBENAR-BENARNYA, BUKANNYA *PUBLIC PURPOSE* YANG DIREKA-REKA, KHAYALAN ATAU ILUSI.

Public purpose hendaklah merupakan *public purpose* yang sebenar-benarnya, bukannya *public purpose* yang direka-reka dan khayalan, was-was dan ragu-ragu atau semata-mata sangkaan yang samar-samar. Apa yang dimaksudkan dengan benar-benar ialah terdapat unsur-unsur awam dan kepastian pelaksanaan *public purpose* itu mendatangkan faedah kepada awam tanpa wujud sebarang keraguan dan kesamaran. Ini kerana pengambilan tanah bukan matlamat tetapi cara. *Public purpose* yang diada-adakan adalah *public purpose* yang disifatkan sebagai suatu ilusi. Antara kes di luar negara yang dapat dijadikan rujukan bagaimana bentuk dan rupa *public purpose* yang disifatkan sebagai khayalan dan direka-reka iaitu dalam kes:

10.1 *Collector Allahabad v Raja Ram (AIR 1985 SC 1622).*

Fakta kes adalah seperti berikut: Pada bulan Mac 1971, Raja Ram Jaiswal dan keluarganya telah

membeli tanah Plot No. 26 dengan keluasan 2,978 ela persegi yang terletak di Jalan K.P. Kakkar untuk membina sebuah *cinema theatre* yang kalis bunyi (*a sound proof air-condition cinema theatre*). Pelan bangunan telah diluluskan oleh *District Magistrate* dan Majlis Perbandaran. Pada 6 Julai 1971, beliau juga telah memperolehi lesen untuk membina *cinema theatre* dari Lembaga Pelesenan mengikut *Cinematograph Rules 1951*. Tanah Plot No. 26 ini terletak bersebelahan dengan tanah yang dimiliki oleh *The Hindi Sahitya Sammelan (Sammelan*). Pengurusan Sammelan telah merancang untuk membina sebuah bangunan muzium yang dilengkapi perpustakaan dan bilik bacaan atas tanah miliknya. Bangunan tersebut masih belum dibina, dan tanah masih kosong walaupun telah memilikinya sejak tahun 1953 lagi.

Pada pandangan pihak pengurusan Sammelan, kewujudan *cinema theatre* atas Plot No 26 boleh mengganggu suasana dan persekitaran pembelajaran di Sammelan. Pengurusan Sammelan tidak bersetuju dan membantah keras pembinaan *cinema theatre* tersebut. *The authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity. The Sammelan promptly objected to the ground that existence of a cinema theatre within the*

vicinity of the campus of the institute of culture learning and research like the Sammelan would be destructive of the environment and atmosphere of the institute, and existence of a cinema theatre at such a place would be an incongruity. An institute of learning and research cannot co-exist with a cinema theatre in its vicinity, and that the latter may pollute the educational and culture environment.

Pengurusan Sammelan telah menghantar surat bantahan kepada pelbagai agensi Kerajaan termasuk kepada *District Magistrate* selaku pihak yang mengeluarkan sijil kebenaran untuk pembinaan bangunan *cinema theatre* pada 24 Mac 1972, juga kepada Perdana Menteri India memohon supaya membatalkan sijil kebenaran untuk pembinaan *cinema theatre* yang telah diberikan kepada Raja Ram Jaiswal.

Apa yang mengejutkan, pada 31 Januari 1974, notis pengambilan tanah di bawah seksyen 4(1) *Land Acquisition Act 1894* telah dikeluarkan di mana tanah Plot No. 26 yang luasnya 2978 ela persegi akan diambil balik bagi tujuan awam *(public purpose)* iaitu untuk pembesaran *Hindi Sangrahalaya of Sahitya Sammelan Pragyag.* Raja Ram Jaiswal membantah pengambilan ini. Kes ini di bawa ke Mahkamah Tinggi

dan ke Supreme Court. Mahkamah mendapati pengeluaran lesen oleh *District Magistrate* teratur; Sammelan *is not an educational institution nor a residential institution and it has no regular programme of class teaching and it cannot be styled as an educational institution; construction of a cinema theatre building on the proposed site is not against the public interest; an air-conditioned sound-proof cinema theatre which would enhance the beautification of the locality and would enrich the coffers of the State; the distance between the proposed cinema theatre building and the campus of the Sammelan was about 95 feet as crow-fly measure; and there is enough land roughly admeasuring 7315 sq. yds. lying vacant and unutilized with the Sammelan for over a quarter of a century.*

Justeru itu kewujudan *cinema theatre* tidak akan mengganggu aktiviti di Sammelan. Mahkamah mendapati bahawa pengurusan Sammelan tidak memerlukan tanah bagi tujuan pembesaran Sammelan, tetapi untuk menghalang tuan tanah - Raja Ram Jaiswal - daripada membina bangunan *cinema theatre* atas tanahnya. *Supreme Court* merumuskan bahawa pengambilan tanah tersebut untuk membina sebuah bangunan muzium yang

dilengkapi perpustakaan dan bilik bacaan adalah suatu khayalan, silap mata dan pura-pura semata-mata atau *need of the land for museum – cum – library cum reading room was a figment of imagination conjured up to provide an ostensible purpose for acquisition.*

Supreme Court menegaskan bahawa kuasa yang diberikan oleh Parlimen melalui seksyen 4(1) kepada Kerajaan dan Pemungut Hasil Tanah adalah untuk mengambil tanah bagi tujuan *public purpose*; dan pengambilan tanah Plot No. 26 ini adalah untuk memuaskan hati Sammelan yang tidak boleh disifatkan sebagai *public purpose. The court pointed out that s 4 (1) coffer power on the Government and the collector to acquire land for a public purpose. The court then raised the question : if the authorities of the Sammelan cannot tolerate the existence of a cinema theatre in its vicinity can it be said such a purpose would be a public purpose? The power to acquire land was a exercised for an extraneous and irrelevant purpose and it was colorable exercise of power, illegal and invalid, but to satisfy the chagrin and anguish of the Sammelan at the coming up of a cinema theatre in the vicinity of its campus, which vowed to destroy.*

10.2 ***State of Punjabi v Gurdial Singh (AIR 1984 SC986).***

In this case, the High Court struck down land acquisition proceedings for acquiring the petitioner's land on the ground of mala fides. The state came in appeal to the Supreme Court, but the court refused leave to appeal and let the High Court decision stand. From the course of events, the fact that the acquisition proceeding were initiated at the behest of one of the respondents, who was a minister in the government and a local politician, to satisfy his personal vendetta against the plaintiff landholder, and also the fact that the allegations made by the petitioner remained uncontroverted by the respondents, the court concluded that there was malice on the part of the government in acquiring the petitioner's land. The court was satisfied that the statutory power to acquire land had been misused in the instant case to satisfy the personal vendetta of an influential politician against the landowner.

The court emphasized that under the Land Acquisition Act, land can be acquired for a public purpose, but if it is shown that this is not the goal pursued, but that private satisfaction of wreaking vengeance is the moving consideration in the

selection of the land for acquisition, then the exercise of the power would be bad.

10.3 ***Municipal Council of Sydney v Campbell & Ors. ([1992[2 SCC168), a Privy Council case from Australia.***

The Municipal Council had statutory power to acquire land compulsorily, if required, for the purpose of making or extending streets or for carrying out improvements in the city. The council decided to acquire a piece of land for the purpose of improving the city. On being challenged by the landowner, the court found that, in fact, the land was not acquired for the purpose stated, but with the object of enabling the council to get the benefit of any increment in the value of the land in question which was expected to accrue as a result of extension of a street nearby. The court found that the council had not prepared any plan for the improving of the city; the minutes of the council showed that the idea underlying the said acquisition was only financial advantage to the council. The acquisition proceedings were consequently quashed. The privy Council stated the legal principle as follows:

> *“ A body such as the Municipal Council of Sydney, authorized to take land compulsory for specified purposes, will not be permitted to exercise its powers for different purposes, and if it attempts to do so, the court will interfere.”*

Dalam kes yang lain, pengambilan tanah untuk pusat penyembelihan moden dikatakan sebagai *stretch of imagination. The land had been acquired for the purpose of establishment of a slaughter-house on modern lines and for the further auxiliary object of manufacturing valuable or important drugs like adrenalin and insulin, other gland products like pituitrin, thyroxin, testicular hormones, and osteogenic hormones etc. now exclusively imported from abroad, (were expected to be manufactured in the proposed Slaughter-House on scientific basis) is not and cannot be a public purpose.* Dalam kes ini, pada 18 Februari 1960, *State of West Bengal* telah memutuskan untuk mengambil satu kawasan tanah dengan keluasan 106.19 ekar di *Village Mrigala, District Hooghly, State of West Bengal*, India untuk *public purpose* iaitu untuk membina pusat penyembelihan moden. Tujuan pembinaan pusat ini adalah untuk: (i) *to centralize slaughter of animals for of meat to the public as well for maximum utilization of blood and glands of animals slaughtered for medicinal purposes under proper control and supervision it is necessary to establish a slaughter house with adequate capacity; (ii) that*

the utilization of blood and glands of animals slaughtered for medicinal purposes will lead to considerable saving in foreign exchange, because such medicinal products, essential for treatment of diseases, have to be imported at a heavy cost; (iii) that endocrinology has assumed great importance in modern times in the treatment of diseases in as much as secretions (hormones) from endocrine glands of animals are of invaluable help in such treatment and that utilization of such glands is not possible without a proper slaughter-house; and (iv) that new Slaughter-House, designed on modern lines and well provided with requisite arrangements and facilities for efficiently conducting the slaughtering, flaying, dressing and all other operations, should be set up well away from inhabited areas and that in selecting the new sites, future expansion of the towns should be taken into consideration and adequate space should be provided for further development of the Slaughter House and for locating around it various ancillary traders.

Cadangan pengambilan tanah bagi tujuan tersebut menjadi isu dan mendapat bantahan banyak pihak. Antaranya ialah daripada : *(i) Dr. Nalini Ranjan Sen Gupta, a physician of repute. His affidavit contains medical objections to the establishment of a hormones drug factory, within the environment of a slaughter house. He also says that organotherapy does not at present occupy the same position as it used to hold 30 years back and is decreasing in*

importance. He expressed the definite opinion that it was not necessary to establish a slaughter house with a drug manufactory attached, of the nature proposed' (ii) Sri Rabindra Nath Mukherjee, who is the Secretary of the Managing Committee of a School at a place known as Garalgacha. He claims to have read at the Commercial Library in Calcutta volumes of a journal styled "Monthly Statistics of the Foreign Trade in India" and his affidavit contains statistical objections to the utility of establishment of a hormone drug factory at the place proposed. Without going into the details of figures collected by him, it appears from his affidavit that he intends to establish that foreign exchange employed in importing hormone drugs does not come up to a very large figure; (iii) Sri Basanta Kumar Chatterjee, who had served as an Accountant-General in Burma and in several other provinces of British India and also as the Chief Auditor of the East Indian and the Bengal Nagpur Railways, also a veteran in cow-protection. He claims to have acquired knowledge of cow-protection and in legislation prohibiting cattle slaughter and in modernization of slaughter-houses. His affidavit contains political, economic and sentimental objections to the proposed scheme for the establishment of a slaughterhouse. He says that while many States in India have passed laws prohibiting cattle slaughter. West Bengal lags behind. He further states that the Delhi Municipal Corporation turned down a proposal for establishment of a slaughter house and

if a similar proposal had been put up before the Municipal Corporations of Bombay and Madras, they would have, he believed, rejected the same. He also says that the proposal to establish a slaughter-house was not even mooted before the Calcutta Corporation. He believes that the Government was persuaded (whom by he does not expressly say) to start the slaughter-house scheme, He condemns the whole thing as an attempt or a pretext to deprive West Bengal of the beneficial provisions of the directive principles contained in Article 48 of the Constitution, to benefit hide merchants and butchers and to rob the State of plentitude in the supply of milk and ghee. He condemns the land acquisition scheme as mala fide, unnecessary and beyond the power of the State Government' (iv) Mr. Apurbadhan Mukherjee, learned Advocate for the petitioners, argued, in the first place, that saving of foreign exchange, which was said to be a purpose behind the proposed establishment of the drug factory, on the land to be acquired, was not and could not be the purpose of a State, because foreign exchange came under Federal List.

Walau bagaimanapun, Mahkamah Tinggi Calcuta menolak semua bantahan dengan menyatakan, antara lain, bahawa: *(i) functions of a Government to look after the health of the people and for that end to arrange for supply of good food and medicine to them; (ii) Indians are not all vegetarians; there are many for whom meat is a part of their diet, or a necessity when they may afford; (iii) animals slaughtered*

under insanitary conditions diseased animals slaughtered in private butcheries do not supply hygienic food; (iv) the slaughter house is being established not for cow-slaughter only. Goats and sheep will also be slaughtered in the slaughter-house. It is common knowledge that many caste Hindus eat goat meat and sheep mutton; (v) cow-slaughter, it is true, is disliked by the caste Hindus. Hindus do not, however, make the entire population of India. The Government has an equal duty to look after the welfare of non-Hindu population of India, by no means a negligible figure. It is no argument to say that a slaughter house, if at all to be established, there must not be slaughtered cows and bulls, the meat of which animals the caste Hindus do not eat. Such meat is not a taboo to Non-Hindus and there is no reason why State slaughter houses must not cater to their needs as well; and (vi) the scheme for the establishment of the slaughter house is being established to meet the need of hygienic meat for all religious denominations, Hindus and Non-Hindus alike. (Calcutta High Court. Gadadhar Ghosh vs State Of West Bengal on 28 August, 1962, AIR 1963 Cal 565, 67 CWN 460.)

Di Malaysia, penulis tidak lagi menemui pengambilan tanah dibatalkan oleh mahkamah atas alasan tanah diambil bagi tujuan yang samar-samar dan tidak jelas *(for a vague purpose*), tujuan yang was-was (*impugned purpose*), atau *unauthorized purposes,* walaupun pernah dicabar. Antaranya ialah kes *Syed Omar bin Abdul Rahman Taha*

Alsagoff & Anor v State of Johor ([1979] 1 MLJ 49]. Dalam kes ini, Syed Omar bin Abdul Rahman Taha Alsagoff *complains that he has developed 3 pieces of his land as a beach and a holiday resort by building chalets, a restaurant and others amenities to attract tourists, he has obtained a first class hotel license in 1969, but his application for converting this land from agricultural to building use has met with no response.* Tetapi apa yang berlaku ialah pada 18 Januari 1971, Kerajaan Negeri Johor telah mewartakan pengambilan tanah mengikut seksyen 8 APT 1960 untuk mengambil balik tanah beliau bersama dengan tanah milik jirannya yang lain seluas 5,713 ekar untuk "Pembinaan Pelabuhan, Perumahan dan Perusahaan". Setelah membuat semakan dengan pelan susun atur *(lay-out plan)* yang disediakan Unit Perancang Ekonomi Johor, beliau mendapati tanah yang diperlukan bagi tujuan pembinaan pelabuhan, perumahan dan perusahaan hanya seluas 2,000 ekar sahaja. Mengikut pelan susun atur tersebut, tanah beliau telah dizonkan sebagai *special area. He challenged the acquisition as null and void on the ground that the land was acquired for unauthorized purposes. He contended that the lay-out plan prepared by the State Planning Officer showed his lands zoned for 'special area', and that such a purpose did not come purpose of the acquisition to be 'construction of port, residential and industrial'. He challenged the acquisition of some of lands under Johore Gazette Notification No. 55 of 1971 is invalid and bad faith*

by reason, it is said that Government is acquiring land more than its actual needs.

Permohonan ini ditolak oleh Mahkamah Persekutuan dengan alasan seperti berikut:

"It is contended that the Government is acquiring the land in bad faith, as it acquiring lands far in excess of the need for the public purposed mentioned in the G.N. which is said to be 2,000 acres. The total area the Government has acquired under the G.N. is 5,713 acres. The explanation of the Government's side is that 2,000 acres reflect only the exact need which does not include incidentals e.g. roads, drains, open space, gardens and vehicle park. I think it should be common knowledge that more land are used than their exact needs. If a person wants to build for himself a dwelling house of say 30 feet by 70 feet he requires more than what it is exactly intended for the house, so as to allow himself a patch of garden or to be some distance away from his neighbors. For this I think, he would requires a piece of land at least 6,000 square feet which is about three times more than the exact area required for the house. Similarly in acquiring land, say, for a school, the building itself usually occupies an acre, but the Government does not acquire exactly that one acre. The Government will have to acquire at least 5 acres so that there may be a canteen, playground etc. for the children. And in acquiring land for a road, I do

not think it would be good sense to acquire just the bare width of the road to be built, without taking into account the side-table, the drain to be built, cables and water pipes to be laid alongside the road, and also the future widening of the road itself with the increase in traffic. The law allows for these incidentals. The relevant portion of section 30 of the Interpretation and General Clauses Ordinance, 1948 reads:-

> *"Where a written law confers power on any person to do…any act or thing, all such powers shall be understood to be also conferred as are reasonably necessary to enable the person to do….the act or thing."*

In the case here, the Government is building a new industrial town with a port. It cannot be denied that all this is for the public good and not for the benefit of a few individuals. The Government has said that all the lands are required for the purpose declared in the notification. I do not think it is desirable to take the Government to task by requiring it to account for every inch of the lands it is acquiring. The applicants should show more than what they have shown in order to establish bad faith. The onus is on them and it is a heavy one. On the evidence shown in the present case, they have not shown any bad faith on the part of the Government.

A part from that, the applicants here are relying on what transpired in the planning stage in 1970. From the affidavits by the Government side the proposal for the 2,000 acres was by the State Development Officer in April, 1970. It is clear from what transpired afterwards that the State Authority itself was of the mind that more lands were needed. And hence the declaration of 5,713 acres which was made in June, 1971. The plan relied upon by the applicants themselves clearly shows that except for the 385 acres other areas are within the declared public purposes. On this ground by itself, they are not entitled to question acquisition of other areas".

Sebenarnya jika diteliti, didapati banyak pengambilan tanah dibawa ke mahkamah atas alasan tujuan pengambilan yang samar-samar dan tidak jelas, was-was dan berniat jahat. *There has been a spate of cases in which land acquisition proceeding have been questioned in the courts.* Memandangkan kepada tuduhan ini amat berat dan serius, maka pihak yang mendakwa sedemikian perlu membawa suatu bukti yang jelas dan boleh diterima oleh mahkamah. *Suspicious was not enough. There must be proof.* Oleh itu ia ditolak oleh mahkamah.

Bukanlah suatu perkara yang mudah untuk mencabar bahawa sesuatu tujuan pengambilan tanah itu samar-samar

dan tidak jelas, was-was dan berniat jahat. Jika sekiranya berlaku juga tujuan pengambilan tanah itu samar-samar dan tidak jelas, was-was dan berniat jahat, tetapi tidak dapat dibuktikan di mahkamah, penulis sifatkan sebagai *legally right but morally wrong.*

(BERSAMBUNG DI BAHAGIAN KETUJUH)

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