



**PEKELILING KETUA PENGARAH TANAH DAN GALIAN PERSEKUTUAN
BILANGAN 4/1974**

Pajakan Tanah Simpanan Keretapi

Pekeliling ini dikeluarkan bagi menasihati Pendaftar-pendaftar Hakmilik dan Pemungut-pemungut Hasil Tanah berkenaan kuasa memberi pajak tanah-tanah simpanan keretapi.

2. Soalan-soalan yang berikut berhubung dengan pajakan tanah simpanan keretapi telah ditimbang oleh Peguam Negara dan perkara-perkara yang bertalian adalah dinyatakan di dalam suratnya kepada Penasihat Undang-undang Selangor bertarikh 6hb. Mei, 1969 - (P.N.3309/1 Part 11(73) di mana satu salinannya dikembarkan sebagai Lampiran 'A' :

- (a) sama ada tanah simpanan keretapi boleh diberi pajakan memandangkan kepada peruntukan-peruntukan Perkara 84, 85 dan 86 Perlembagaan Persekutuan.
- (b) jika sekiranya tanah simpanan tersebut boleh diberi pajakan, oleh siapa dan cara mana dan dalam keadaan bagaimana pajakan tersebut hendak diberi.

Peguam Negara telah menasihati bahawa tanah simpanan keretapi hanya boleh diberi pajakan menurut peruntukan-peruntukan Kanun Tanah Negara.

3. Yang demikian, Pendaftar-pendaftar Hakmilik dan Pemungut-pemungut Hasil Tanah adalah dinasihati bahawa tanah simpanan keretapi ialah tanah simpanan bagi maksud kegunaan Persekutuan dan pajakan bagi kesemua atau sebahagian daripada simpanan tersebut mestilah dibuat mengikut peruntukan-peruntukan seksyen 63 Kanun Tanah Negara.

4. Pekeliling Pesuruhjaya Tanah No. 9 of 1950 di atas perkara Pajakan Simpanan Keretapi (di dalam Negeri-negeri Melayu) dan Pekeliling Pesuruhjaya Tanah No. 16 of 1951 di atas perkara yang sama dengan ini adalah ditarik balik dan dibatalkan.

DATO' ABDUL MANAF BIN MOHD. NOR,
Ketua Pengarah Tanah dan Galian
Persekutuan

P.T.TM 136 SULIT 19/61

Kuala Lumpur,
Februari, 1974.

COPY

Your Ref: (13)dlm.L.A.Sel.1244

CHAMBERS,
Our Ref : P.N.3309/1 Pt. II(73)

JABATAN PEGUAM NEGARA,
ATTORNEY-GENERAL'S

MALAYSIA

Kuala Lumpur 6hb Mei, 1969

Yang Berhormat,
Penasihat Undang-undang Negeri,
Selangor,
KUALA LUMPUR

*Leasing of Railway Reserve under the
National Land Code*

I refer to your letters dated 31st March, and 17th. April, 1969 regarding the above subject matter.

2. The question of leasing railway reserves raises two important legal questions, namely -

(a) whether or not the railway reserves could be leased at all in view of the provisions of Articles 84, 85 and 86 of the Federal Constitution, and

(b) if the railway reserves could be so leased, by whom and in what manner and what circumstances the leasing of these reserves can be granted.

3. As regards the first question, a railway reserve is a State land having been reserved under the former F.M.S. Land Code Cap. 138 and under the previous land legislations in the States of Malaya before the coming into force of the National Land Code. This reserve, however, is State land and all that the Railway Administration has in the reserve is the right to make use of the land for railway purposes which are among the federal purposes within the meaning of the Federal Constitution. Therefore, whether this reserve land can be leased or in any way be disposed of by the Railway Administration depends upon whether or not the leasing or disposal thereof could be regarded as amounting to the railway having no more use for the land. In other words, the leasing of the reserve is permissible if the land ceases to be required for railway purposes. This, however, is a question of evidence depending on a number of factors such as the period of the lease, the purpose for which the land is to be used by the intended lessee and the conditions on which the reserved land is to be surrendered to the Railway Administration at the end of the lease and furthermore the nature of the activities of the intended lessee. Thus, if the purposes for which the land is leased will result in the land being unfit for railway purpose, or in unreasonable expenses to be incurred in order to render the land fit to be used for these purposes, then the leasing

thereof could be regarded as, that the land now ceases to be required for railway purposes, thereby preventing the said land from being leased. Based on these considerations, I am therefore of the opinion that the granting of lease for mining purposes cannot be regarded as permissible because this will be inconsistent with the land still being required for railway purposes, whereas the granting of lease for the erection of a petrol station is feasible provided that such lease is made conditional upon the land being made available for railway purposes as and when it is so required, and that the period of the lease is not unreasonably long.

4. Having decided that it is possible for the railway reserve to be leased for a certain duration and for special circumstances only, the question now arises, by whom and in what manner this lease could be granted. Should the lease be granted by the General Manager of the Malayan Railway or by the Federal Lands Commissioner, both of whom acting in accordance with section 22 of the Malayan Railway Ordinance, 1948, or should it be leased by the State Authority in accordance with the provisions of sections 62 and 63 of the National Land Code? In order to arrive at the proper answer to this question, it is very important to examine the land legislation and the Railway Ordinance way back before the formation of the Malayan Union and test these legislations against the three important constitutional documents, namely the Malayan Union Order in Council 1946, the Federation of Malaya Agreement Order in Council 1948 and the Federal Constitution, 1957.

The Former F.M.S. Land Code Cap. 138

5. Under section 24 of the Code, the Ruler in Council may reserve any State land for any public purpose. As long as the reserve continues, no disposition of the land was permissible except in the following circumstances, namely-

- (a) where the disposition was for the purpose for which reservation was made, namely for that particular public purpose; and
- (b) where the reserve was created solely for the protection and furtherance of public works in which case the Ruler in Council may on the application of the officer having control of the reserve grant leases for a period not exceeding twenty-one years.

Apart from these two cases, no disposition of reserve land was possible without involving the revocation of the reserve.

Malayan Union Order in Council

6. The Malayan Union Order in Council, 1946, came into force on the 27th. Of March, 1946, which established a single Government for the whole of Malaya. There was only Legislature consisting of the Governor of the Malayan Union and the Legislative Council who had legislative competence on all matters. There was, therefore, no question of division of powers between the State and the Federal because the State were not regarded as legal entities, have their own Legislatures (see Malayan Union Order in Council, Clauses 27 and 85). It is in pursuance of the Malayan Union Constitution (Order in Council) that the Malayan Railway Ordinance (M.U. No. 8 of 1948). Since under the Malayan Union Constitution there was no division of powers between the State and the Central Government as it is today, it is therefore

understandable that the Malayan Railway Ordinance makes no distinction between what might fall under the competence of the Central Government and what might fall under the competence of the State Government. The whole body of the legislation was bounded in one. Therefore as on the 31st. of January, 1948, the date on which the Malayan Railway Ordinance came into force, the law with regard to disposition of reserve land is that whilst the State could normally grant leases of reserve land on the application of the officer having control of that land, as regards the Malayan Railway the General Manager and the Chief Secretary had the power to grant the leasing of land reserved for railway purposes. This is expressly stated to be the case by section 22 of the Ordinance which begins with the expression "Notwithstanding the provisions of any written law". The written law that is referred to in this section cannot be other than the former F.M.S. Land Code Cap. 138 and the equivalent land legislations in other States in Malaya.

The Federation of Malaya Agreement, 1948

7. Under the Federation of Malaya Agreement, legislation on land except those for the purpose of bringing about uniformity in land legislation, came under the competency of the State Legislatures. Even if the Federal Legislature could make laws at the request and consent of more than one State with regard to the State matters, this did not empower the Federal Legislature to pass law conferring upon the Federal Government executive power of authority which belonged to the State Government. Further, although there is no provision in the Agreement to the effect that the Agreement is the supreme law of the land, there is however a provision to say that any existing law shall be construed in such a way as to be in accord with the Agreement. This provision gives rise to an implication that any law passed by the Federal Legislature must not contravene the provisions of the Agreement.

Malayan Railway Ordinance No. 8 of 1948

8. This Ordinance was passed by the Malayan Union as its Ordinance No. 8 of 1948 and came into effect on the 31st. of January, 1948, that is, the day immediately preceding the establishment of the Federation of Malaya under the Federation of Malaya Agreement, 1948.

9. Under this Ordinance, railway reserve is defined to mean all lands duly reserved before or after the commencement of the Ordinance for the purpose of the Malayan Railway under the provisions of section 24 of the F.M.S. Land Code of the corresponding provisions of other land legislation in Malaya (section 2). By virtue of section 22 of this Ordinance, the General Manager and the Chief Secretary grant lease of railway reserve respectively for a term not exceeding thirty years and ninety nine years.

The position before Merdeka

10. At the time just before the coming into force of the Federation of Malaya Agreement, 1948 there were two laws operating side by side, namely section 24 of the F.M.S Land Code and section 22 of the Malayan Railway Ordinance M.U. No. 8 of 1948.

11. Unfortunately for the Malayan Railway Ordinance the Constitution of the Malayan Union was replaced by the Federation of Malaya Agreement on the 1st. of February,

1948. The validity of section 22 of the Ordinance and perhaps other provisions in the Ordinance which deal with land must be tested against the provisions of the Federation of Malaya Agreement. This Agreement established a federation in which there is proper division of powers between the Federal Government and the State Governments. As regards land, legislation thereon, except

for purposes of bringing about uniformity in the legislation, came under the competence of State Legislature (see Second Schedule). Furthermore, under Clause 135 of the Agreement, all laws made before the Agreement came into force continue to be valid but shall be construed subject to such modifications and adaptations as may be necessary to bring them into conformity with the provisions of the Agreement. It, therefore, could easily be seen that by a stroke of the pen as on the 1st. of February, 1948, the provisions of section 22 of the Malayan Railway Ordinance, 1948, became inconsistent with the Federation of Malaya Agreement and therefore as on that day there was no question of the General Manager or the Chief Secretary or his successor, the Federal Lands Commissioner, having the power to grant leases to reserve land. The authority which should grant leases of railway reserve should then be done by section 24 of the F.M.S. Land Code, namely the Ruler in Council. One therefore could see that section 22 of the Malayan Railway Ordinance had only one day's life, namely on the 31st. of January 1948.

12. Having come to the conclusion that as on the date when the Federation of Malaya Agreement came into force it was the Ruler in Council, in accordance with section 24 of the F.M.S. Land Code, who had the necessary power to grant leases of railway reserve, what happened after this date becomes clear. The Federal Constitution which was promulgated in August, 1957, contain the same division or power between the Federal Government and the State Governments by which land comes under the competence of the State Government and later the National Land Code 1965 reaffirms once again that the power to grant leases of reserve land is vested in the State Authority which is the successor to the Ruler in Council under the former land legislation. It therefore become evident that no more reliance can now be placed on section 22 of the Malayan Railway Ordinance because this section had been overtaken by the Federation of Malaya Agreement on the 1st of February, 1948.

13. In answer to your question, I therefore hold the view that the lease of railway reserves must now be governed by the National Land Code.

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