
PENANG DEVELOPMENT CORPORATION v. CHINAMAH A/P RAMASAMY & 3
OTHER APPEALS
HIGH COURT, PULAU PINANG
ABDUL HAMID MOHAMED J
CIVIL APPEAL NOS. 11-14-90, 11-13-90, 11-15-90 & 11-16-90
3 JULY 1993
[1993] 1 LNS 46

Unreported

Counsel:

For the appellant - Lim Kean Chye; M/s. Lim Ewe Hock & Co.

For the respondent - Mohideen Abdul Kader; M/s. Mohideen & Partners

Abdul Hamid Mohamed J:

These four appeals were heard together. Only one point of law is in issue.

In all these cases, the respondents sued the appellant, the Penang Development Corporation, for liquidated damages for late delivery of houses purchased by them from the appellant. It is not disputed that the respondents did not commence their actions within 36 months from the last date the houses should have been delivered. The appellant claims that it is protected by the provisions of s.2(a) of the Public Authorities Protection Act 1948 (Act 198). That is the only issue.

Section 2(a) of the Act provides as follows:

2. Where, after the coming into force of this Ordinance, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect -

(a) The suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act, neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next after the ceasing thereof.

Section 13 of the Penang Development Corporation Enactment 1971 (PDC Enactment) provides as follows:

13. The Public Authorities Protection Ordinance, 1948 shall apply to any action, suit, prosecution or proceeding against the Corporation or against any member, officer, servant or agent of the Corporation in respect of any act, neglect or default done or committed by the

Corporation or such person in such capacity.

To answer the question whether para.(a) of s.2 of Act 198 applies to this case or not it is necessary to determine whether the obligation imposed by clause 26(b) of the agreement on the appellant to complete and deliver vacant possession of the houses to the plaintiffs within 24 months from the date of the agreement is "an act done in pursuance or execution or intended execution... of any public duty or authority" or in respect of any "alleged neglect or default in the execution of any such... duty or authority..."

My attention was drawn to the provisions of s.14 of the PDC Enactment, which, inter alia, provides:

14. It shall be the duty of the Corporation:

(a) to promote the development of agricultural, industrial, commercial, trading and residential areas and/or projects in the State designated for such purposes; and to undertake agricultural, industrial, commercial, trading and housing enterprises;

(b)...

(c)...

(d) to do all such other acts and things as are necessary for the exercise or performance of all or any of the functions and duties of the Corporation;

A number of authorities were referred to me by learned Counsel for both parties.

The leading case on this point is the case of [*Government Of Malaysia V. Lee Hock Ning \[1973\] 1 LNS 36*](#), a decision of the Privy Council from Malaysia and is therefore binding on this Court. In that case the respondent claimed payment of money due under a series of building contracts entered into between him and the appellants, the Government of Malaysia, for the building of primary schools. It was held that in that case that the right of the respondent was correlated not with a statutory right or duty of the appellant which was the provision of education but with the obligations entered into by the appellants in their contract with the respondent and accordingly the respondent's claim was not barred by the Act.

Based on the reasoning of that case, I am of the view that the rights of the respondents in this case too is not correlated with the statutory duty of the appellant, which, so far as is relevant, is "to undertake housing enterprises." It is correlated with the obligation contained in the contract between the appellant and the respondents (buyers). As stated in the judgment of Lord Kilbrandon in the same case, "the question whether in making a contract, the authority were exercising powers or carrying out duties is irrelevant."

In the circumstances, I am of the view that s.2(a) of Act 198 is not applicable.

These appeals are dismissed with costs.