

A **GULA PERAK BHD v. DATUK LIM SUE BENG &
OTHER APPEALS**

FEDERAL COURT, PUTRAJAYA
ZULKEFLI AHMAD MAKINUDIN PCA
RAMLY ALI FCJ

B AZAHAR MOHAMED FCJ
BALIA YUSOF WAHI FCJ
ALIZATUL KHAIR OSMAN FCJ
C [CIVIL APPEALS NO: 02(f)-45-05-2017(B),
02(f)-46-05-2017(B), 02(f)-59-06-2017(B),
02(f)-60-06-2017(B), 02(f)-61-06-2017(B) &
02(f)-65-06-2017(B)]
10 OCTOBER 2018

D *LAND LAW: Sale and purchase agreement – Estate land – Conditional agreement to sell estate land – Sale subject to obtaining approval of Estate Land Board – Intention of Parliament – Whether to prevent fragmentation of estate land – Whether failure to obtain prior approval from Land Board before entering into agreement contravened s. 214A(1) of National Land Code – Whether agreement null and void – Whether approval of Land Board to be obtained before registration of title – Whether Form 14D to be jointly submitted – Whether existence of intended purchaser pre-requisite for application for approval of Land Board – National Land Code, s. 214A(1), (2) & 214A(10A)(a)*

F Gula Perak, a public limited company by shares, obtained financial assistance from syndicated term loan lenders, namely, Aseambankers Malaysia, RHB Bank Berhad, AmBank (M) Berhad, DBS Bank LTD Cawangan Labuan, Alliance Merchant Bank Berhad, Malaysian Industrial Development Finance Berhad, Southern Bank Berhad, Affin Bank Berhad and Malayan Banking Berhad ('the lenders'). When Gula Perak was not able to service the syndicated term loan facility, the lenders commenced a civil
G suit against Gula Perak and its guarantor, Datuk Lim. After a full trial, judgment was granted in favour of the lenders. Gula Perak was subsequently wound up and the affairs and management of Gula Perak was administered by the court appointed liquidators. As at the date of its winding-up, Gula Perak was still indebted to AmBank to the total sum of RM81,037,450.62.
H Initially, Gula Perak was granted a term loan of RM190,000,000 by AmBank under a term loan agreement. Gula Perak defaulted in payments and in view of the settlement with AmBank, Gula Perak issued a five-year 3% redeemable secured bonds for a nominal value of RM90,124,000 for the full and final settlement of the term loan. The bonds were secured by a legal charge in favour of AmBank, executed over an oil palm estate land known
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as Sitiawan Estate, which was later substituted with a deed of assignment. When Gula Perak remained in default of the repayment to AmBank, AmBank sought to realise the deed of assignment only to be hindered by a caveat lodged by Faithmont Estate Sdn Bhd ('Faithmont') on the said land. Prior to the commencement of the winding-up proceeding against Gula Perak, Faithmont initiated a civil action against Gula Perak in the High Court claiming for specific performance of a sale and purchase agreement in respect of the said land and in another related suit, Faithmont filed a suit against AmBank in respect of the said land for the removal of the caveat on the said land. All the suits involved the same land and therefore were consolidated. In the midst of trial, the dispute was successfully mediated as a result of which Gula Perak, Faithmont and AmBank reached a compromise. Enclosure 80 was an application by the liquidators of Gula Perak pursuant to s. 236(1)(c) of the Companies Act 1965 for the High Court's approval to enter into a compromise to sell off a piece of land in view of the debt between Gula Perak, Faithmont and AmBank. The application was opposed by Yakin Tenggara, a contributory of Gula Perak and Datuk Lim, a preferred creditor in the sum of RM150,000 and an unsecured creditor in the sum of RM28.2 million. Enclosure 80 was allowed by the High Court and a compromise order was obtained. One week after the compromise order was obtained, the parties entered into a consent judgment, on the terms, on which date itself, RM2.6 million was paid by the liquidators of Gula Perak to AmBank's solicitors, being 10% of the redemption sum of RM26 million. The balance sum of RM23.4 million was paid subsequently. Yakin Tenggara and Datuk Lim appealed to the Court of Appeal and both their appeals were allowed and the order of the High Court with regard to the compromise was set aside. Aggrieved with the decision of the Court of Appeal, Gula Perak, AmBank and Faithmont filed their respective applications for leave to appeal. Hence, the six appeals herein. The leave questions, in all the appeals, though differently worded, came to one common issue, *ie*, whether a conditional agreement to sell an estate land ('SPA') to a purchaser with a condition precedent that the sale was subject to obtaining the approval of the Estate Land Board ('Land Board') was in breach of s. 214A(1) of the National Land Code ('NLC') when no prior approval was obtained from the Land Board before entering into the SPA.

Held (allowing all six appeals with costs; setting aside order related decisions and order of Court of Appeal)

Per Ramly Ali FCJ (for the majority):

- (1) The crux of the appeal revolved around the interpretation of s. 214A(1) of the NLC. In general, the court's function is to ascertain the intention of Parliament, which is done from the language that Parliament had used. Section 214A(1) of the NLC was inserted by the National Land

- A Code (Amendment) Act 1969. Based on the Parliamentary Hansard, the sole object or intent of the amendment tabled was to prohibit or prevent fragmentation of estate land. However, in order to correctly interpret s. 214A(1) of the NLC, the section needs to be read and considered as a whole, not only sub-s. 214A(1). All the 12 sub-sections related to the same object or intent *ie*, to control and prevent fragmentation of estate land. (paras 38, 40, 43 & 44)
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- (2) The SPA, read as a whole, showed that the agreement was conditional upon the approval being obtained from the Land Board for the transfer of the land. Section 214A(1) of the NLC does not prohibit the making of a conditional or contingent agreement to sell an estate land which has an express term incorporated in it. The SPA, being a conditional or contingent agreement, was therefore not illegal for non-compliance with the provisions of s. 214A(1) of the NLC. Until the approval of the Land Board was obtained and the pre-condition was then fulfilled, future performance under the agreement remained unenforceable. The SPA by itself did not have the effect of transferring or disposing the land from Gula Perak to Faithmont. Therefore, the SPA could not be declared null and void. (paras 47-49 & 72)
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- (3) Sub-sections 214A(2) and 214A(1) read together, prohibit the Registrar of Land Title from registering any instrument of transfer of estate land unless such instrument is accompanied by a certificate of approval granted by the Land Board. Hence, the Land Board's approval needs only to be obtained at the stage before registration of title is to be done, but not before that. Before Form 14D is submitted to the Board, it must be fully completed for the Land Board's consideration. The requirement to state the name and address of the intended purchaser in Form 14D as well as the signature of the purchaser showed that the existence of an intended purchaser is a pre-requisite for making an application for approval to the Land Board. Section 214A of the NLC contemplates that a conditional agreement between the proprietor of the land and the intended purchaser would be in place at the time when Form 14D is to be jointly submitted to the Land Board for its approval. (paras 50 & 54)
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- (4) Sub-section 214A(10A)(a) creates an offence on any person who transfers, conveys or disposes of or attempts to transfer, convey or dispose in any manner whatsoever, any estate land in contravention of sub-s. 214A(1) of the NLC. In the present case, the SPA was not in breach of sub-s. 214A(1) as it was only a conditional agreement subject to the approval of the Land Board being obtained by the parties. It was not an outright sale of the land. If the approval of the Land Board was
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not obtained, the SPA would be ineffective. Therefore, the penalty provision in sub-s. 214A(10A)(a) is irrelevant and not applicable. (para 68)

- (5) There was no transfer of the property without the approval of the Land Board. There was also no attempt to transfer the property without the approval of the Land Board as the SPA was conditional upon the approval of the Land Board and if such approval was not obtained, the SPA would not be completed. As such, there was no attempt to transfer estate land in contravention of s. 214A(1) of the NLC. The court thus agreed with the ruling of the Court of Appeal that sub-s. 214A(10A)(b) of the NLC was not applicable to the facts of the present case. (paras 69 & 70)

Bahasa Malaysia Headnotes

Gula Perak, sebuah syarikat terhad awam dengan saham, memperoleh bantuan kewangan daripada peminjam-peminjam pinjaman sindiket berjangka, iaitu, Aseambankers Malaysia, RHB Bank Berhad, AmBank (M) Berhad, DBS Bank LTD Cawangan Labuan, Alliance Merchant Bank Berhad, Malaysian Industrial Development Finance Berhad, Southern Bank Berhad, Affin Bank Berhad dan Malayan Banking Berhad ('peminjam-peminjam'). Apabila Gula Perak tidak berupaya membayar kemudahan pinjaman sindiket berjangka, peminjam-peminjam memulakan guaman sivil terhadap Gula Perak dan penjaminnya, Datuk Lim. Selepas perbicaraan penuh, penghakiman diberi berpihak pada peminjam-peminjam. Gula Perak kemudian digulung dan hal-ehwal serta pengurusan Gula Perak ditadbir oleh pelikuidasi lantikan mahkamah. Pada tarikh penggulangannya, Gula Perak masih berhutang dengan AmBank sejumlah RM81,037,450.62. Pada mulanya, Gula Perak diberi pinjaman berjangka RM190,000,000 oleh AmBank bawah perjanjian pinjaman berjangka. Gula Perak ingkar membayar dan berikutan penyelesaian dengan AmBank, Gula Perak mengeluarkan 3% bon-bon berjamin boleh ditebus selama lima tahun pada nilai nominal RM90,124,000 sebagai penyelesaian penuh dan muktamad pinjaman berjangka tersebut. Bon-bon itu dijamin dengan gadaian sah memihak pada AmBank, yang dimeterai atas tanah ladang kelapa sawit, Sitiawan Estate, yang kemudiannya diganti dengan surat ikatan penyerahhakan. Apabila Gula Perak masih ingkar dalam pembayaran balik kepada AmBank, AmBank memohon untuk merealisasikan surat ikatan penyerahhakan tetapi dihalang oleh kaveat yang dimasukkan oleh Faithmont Estate Sdn Bhd ('Faithmont') atas tanah tersebut. Sebelum permulaan prosiding penggulangan terhadap Gula Perak, Faithmont memulakan tindakan sivil terhadap Gula Perak di Mahkamah Tinggi memohon pelaksanaan spesifik perjanjian jual beli berhubung tanah tersebut dan dalam guaman satu lagi yang berkaitan,

- A Faithmont memfailkan guaman terhadap AmBank berhubung tanah tersebut untuk pembatalan kaveat atas tanah itu. Kesemua guaman melibatkan tanah yang sama dan oleh itu, digabungkan. Semasa perjalanan perbicaraan, pertikaian tersebut berjaya diselesaikan dengan pengantara dan dengan itu, Gula Perak, Faithmont dan AmBank mencapai satu kompromi. Lampiran 80
- B adalah permohonan oleh pelikuidasi-pelikuidasi Gula Perak menurut s. 236(1)(c) Akta Syarikat 1965 untuk kelulusan Mahkamah Tinggi untuk memasuki kompromi menjual sebidang tanah berikutan hutang antara Gula Perak, Faithmont dan AmBank. Permohonan tersebut ditentang oleh Yakin Tenggara, penyumbang Gula Perak dan Datuk Lim, pemiutang pilihan untuk
- C jumlah RM150,000 dan sipiutang tanpa cagaran dalam jumlah RM28.2 juta. Lampiran 80 dibenarkan mahkamah dan perintah kompromi diperoleh. Seminggu selepas perintah kompromi diperoleh, pihak-pihak memasuki penghakiman persetujuan, atas terma-terma, iaitu pada tarikh itu, RM2.6 juta
- D dibayar pelikuidasi-pelikuidasi Gula Perak kepada peguam cara AmBank, iaitu 10% jumlah penebusan daripada jumlah RM26 juta. Baki RM23.4 juta dibayar kemudian. Yakin Tenggara dan Datuk Lim merayu ke Mahkamah Rayuan dan kedua-dua rayuan mereka dibenarkan dan perintah Mahkamah Tinggi berhubung kompromi tersebut diketepikan. Terkilan dengan keputusan Mahkamah Rayuan, Gula Perak, AmBank dan Faithmont memfailkan permohonan masing-masing untuk kebenaran merayu. Oleh itu,
- E enam rayuan ini. Soalan undang-undang, dalam kesemua rayuan-rayuan, walaupun bahasanya berbeza, menjurus pada satu isu sama, iaitu, sama ada perjanjian bersyarat untuk menjual tanah ladang ('PJB') kepada pembeli dengan syarat duluan bahawa jualan tersebut tertakluk pada pemerolehan kelulusan Lembaga Tanah Ladang ('Lembaga Tanah') melanggar s. 214A
- F Kanun Tanah Negara ('KTN') apabila tiada kelulusan diperoleh terdahulu daripada Lembaga Tanah sebelum memasuki PJB.

Diputuskan (membenarkan keenam-enam rayuan dengan kos; mengetepikan perintah berkaitan keputusan-keputusan dan perintah Mahkamah Rayuan)

- G **Oleh Ramly Ali HMR (keputusan majoriti):**

- (1) Asas rayuan berkisar sekitar pentafsiran s. 214A(1) KTN. Fungsi mahkamah, secara umumnya, adalah untuk menentukan niat Parlimen, dengan meneliti bahasa yang digunakan oleh Parlimen. Seksyen 214A(1) KTN dimasukkan oleh Akta Kanun Tanah Negara (Pindaan) 1969.
- H Berdasarkan Hansard Parlimen, satu-satunya tujuan atau niat pindaan yang dikemukakan ialah untuk melarang atau menghalang pemecahan tanah ladang. Walau bagaimanapun, untuk mentafsir s. 214A(1) KTN dengan betul, seksyen tersebut perlu dibaca dan dipertimbangkan secara menyeluruh, bukan hanya sub-s. 214A(1). Kesemua 12 sub-seksyen berkaitan dengan tujuan atau niat sama iaitu untuk mengawal dan
- I menghalang pemecahan tanah ladang.

- (2) Perjanjian jual beli, dibaca secara menyeluruh, menunjukkan bahawa perjanjian tersebut bersyarat atas kelulusan diperoleh daripada Lembaga Tanah untuk pindah milik tanah. Seksyen 214A(1) KTN tidak melarang pembuatan perjanjian bersyarat atau kontingen untuk menjual tanah ladang yang mempunyai terma langsung dimasukkan bersama-sama di dalamnya. Perjanjian jual beli tersebut, sebagai perjanjian bersyarat atau kontingen, oleh itu, tidak menyalahi undang-undang kerana ketidakpatuhan peruntukan s. 214A(1) KTN. Sehingga kelulusan Lembaga Tanah diperoleh dan pra-syarat dipenuhi, pelaksanaan masa hadapan bawah perjanjian tersebut kekal tidak boleh dikuatkuasakan. Perjanjian jual beli itu sendiri tidak mempunyai kesan memindah milik atau melupuskan tanah daripada Gula Perak kepada Faithmont. Oleh itu, PJB tidak boleh diisytiharkan batal dan tidak sah. A
- (3) Sub-seksyen-sub-seksyen 214A(2) dan 214A(1) dibaca bersama-sama, melarang Pendaftar Hak Milik Tanah daripada mendaftar apa-apa instrumen pindah milik tanah ladang kecuali instrumen tersebut disertakan dengan sijil kelulusan oleh Lembaga Tanah. Oleh itu, kelulusan Lembaga Tanah hanya perlu diperoleh di peringkat pendaftaran hak milik dibuat, dan bukan sebelum itu. Sebelum Borang 14D dikemukakan kepada Lembaga Tanah, Borang 14D mesti dilengkapkan sepenuhnya untuk pertimbangan Lembaga Tanah. Keperluan menyatakan nama dan alamat pembeli yang berniat membeli dalam Borang 14D serta tandatangan pembeli menunjukkan kewujudan pembeli yang berniat membeli adalah keperluan duluan untuk membuat permohonan kelulusan Lembaga Tanah. Seksyen 214A(1) KTN membayangkan perjanjian bersyarat antara pemilik tanah dan pembeli berniat akan berjaya apabila Borang 14D dikemukakan bersekali kepada Lembaga Tanah untuk kelulusan. B
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- (4) Sub-seksyen 214A(10A)(a) membentuk kesalahan atas sesiapa yang memindah milik, memberikan atau melupuskan atau mencuba memindah milik, memberi atau melupuskan dalam apa-apa cara sekalipun, mana-mana tanah ladang bertentangan dengan sub-s. 214A(1) KTN. Dalam kes ini, PJB tidak melanggar sub-s. 214A(1) kerana ia hanya perjanjian bersyarat tertakluk pada kelulusan Lembaga Tanah diperoleh pihak-pihak. Ini bukan jualan terus tanah tersebut. Jika kelulusan Lembaga Tanah tidak diperoleh, SPA tidak mempunyai kesan. Oleh itu, peruntukan penalti dalam sub-s. 214A(10A)(a) tidak relevan dan tidak terpakai. G
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- A (5) Tiada pindah milik hartanah tanpa kelulusan Lembaga Tanah. Juga, tiada cubaan untuk memindah milik hartanah tanpa kelulusan Lembaga Tanah kerana PJB bersyarat atas kelulusan Lembaga Tanah dan jika kelulusan tersebut tidak diperoleh, PJB tidak akan lengkap. Oleh itu, tiada cubaan untuk memindah milik tanah ladang bertentangan s. 214A(1) KTN. Mahkamah, oleh itu, bersetuju dengan keputusan Mahkamah Rayuan bahawa sub-s. 214A(10A)(b) KTN tidak terpakai pada fakta kes ini.
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Case(s) referred to:

- Ex P Guan Teck Sdn Bhd (Substituting Lim Oo Guan, Deceased) [2010] 4 CLJ 289 FC (refd)*
- C *Farrell v. Alexander [1976] 2 All ER 721 (refd)*
Generation Products Sdn Bhd v. Majlis Perbandaran Klang [2008] 5 CLJ 417 FC (refd)
Kamala Devi v. Takhatumal AIR 1964 SC 859 (refd)
Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor [2017] 4 CLJ 265 FC (refd)
- D *Khatijah Abdullah & Ors v. Mohd Isa Biran [2017] 7 CLJ 513 FC (refd)*
Kumpulan Sua Betong Sdn Bhd v. Dataran Segar Sdn Bhd [1992] 1 CLJ 20; [1992] 1 CLJ (Rep) 150 SC (refd)
Lembaga Hasil Dalam Negeri Malaysia v. Alam Maritim Sdn Bhd [2014] 3 CLJ 421 FC (refd)
National Land Finance Co-Operative Society Ltd v. Sharidal Sdn Bhd [1983] 2 CLJ 76; [1983] CLJ (Rep) 282 FC (refd)
- E *PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 FC (refd)*
Rengamah Rengasamy v. Tai Yoke Lai & Anor [1998] 1 CLJ 987 HC (refd)
Siva Segara Kanapathi Pillay v. PP [1984] 2 CLJ 95; [1984] 1 CLJ (Rep) 353 FC (refd)
Sussex Peerage Case (1844) 11 CI & Fin 85 (refd)
- F *Tai Thong Flower Nursery Sdn Bhd v. Master Pyrodor Sdn Bhd [2014] 9 CLJ 74 CA (dist)*
Vellasamy Pennusamy & Ors v. Gurbachan Singh Bagawan Singh & Ors [2012] 2 CLJ 712 CA (foll)

Legislation referred to:

- Companies Act 1965, ss. 218, 236(1)(c)
- G Contracts Act 1950, s. 33
 National Land Code, ss. 214A(1), (2), (4), (10A)(a), (b), 417

Other source(s) referred to:

- Crease on Legislation*, 9th edn, 2008, p 611
 (Civil Appeal No: 02(f)-45-05-2017(B))
- H *For the appellant - Khoo Guan Huat & Iris Tang Shu Ni; M/s Skrine*
For the respondent - Wong Rhen Yen, Jamie Wong, Shugan Raman & Kelvesh Deshenraj; M/s Jamie Wong

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(Civil Appeal No: 02(f)-46-05-2017(B))

For the appellant - Khoo Guan Huat & Iris Tang Shu Ni; M/s Skrine

For the respondent - Gopal Sri Ram, S Ravenesan, Chin Yan Leng, David Yii, Siti Nur Amirah Aqilah Adzman & Damien Chan; M/s S Ravenesan

A

(Civil Appeal No: 02(f)-59-06-2017(B))

For the appellant - Yoong Sin Min, Poh Choo Hoe & Merie Chen Mong Yi; M/s Shook Lin & Bok

For the 1st respondent - Gopal Sri Ram, S Ravenesan, Chin Yan Leng, David Yii, Siti Nur Amirah Aqilah Adzman & Damien Chan; M/s S Ravenesan

For the 2nd respondent - Khoo Guan Huat & Iris Tang Shu Ni; M/s Skrine

For the 3rd respondent - Wong Rhen Yen, Jamie Wong, Shugan Raman & Kelvesh Deshenraj; M/s Jamie Wong

For the 4th respondent - Cecil Abraham, Bharti Seth, Ramesh Sanghvi, Rishwant Singh & K Kokilah; M/s Bharti Seth & Assocs

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C

(Civil Appeal No: 02(f)-60-06-2017(B))

For the appellant - Yoong Sin Min, Poh Choo Hoe & Merie Chen Mong Yi; M/s Shook Lin & Bok

For the 1st respondent - Wong Rhen Yen, Jamie Wong, Shugan Raman & Kelvesh Deshenraj; M/s Jamie Wong

For the 2nd respondent - Khoo Guan Huat & Iris Tang Shu Ni; M/s Skrine

For the 3rd respondent - Gopal Sri Ram, S Ravenesan, Chin Yan Leng, David Yii, Siti Nur Amirah Aqilah Adzman & Damien Chan; M/s S Ravenesan

For the 4th respondent - Cecil Abraham, Bharti Seth, Ramesh Sanghvi, Rishwant Singh & K Kokilah; M/s Bharti Seth & Assocs

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E

(Civil Appeal No: 02(f)-61-06-2017(B))

For the appellant - Cecil Abraham, Bharti Seth, Ramesh Sanghvi, Rishwant Singh & K Kokilah; M/s Bharti Seth & Assocs

For the respondent - Wong Rhen Yen, Jamie Wong, Shugan Raman & Kelvesh Deshenraj; M/s Jamie Wong

F

(Civil Appeal No: 02-65-06-2017(B))

For the appellant - Cecil Abraham, Bharti Seth, Ramesh Sanghvi, Rishwant Singh & K Kokilah; M/s Bharti Seth & Assocs

For the respondent - Gopal Sri Ram, S Ravenesan, Chin Yan Leng, David Yii, Siti Nur Amirah Aqilah Adzman & Damien Chan; M/s S Ravenesan

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[Editor's note: For the Court of Appeal judgment, please see Yakin Tenggara Sdn Bhd v. RHB Bank Bhd & Ors And Other Appeals [2017] 4 CLJ 738 (overruled);

For the High Court judgment, please see RHB Bank Bhd v. Gula Perak Bhd [2015] 1 LNS 1441 (affirmed).]

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Reported by S Barathi

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A **JUDGMENT**

Ramly Ali FCJ:

[1] These are six appeals heard together before us. The appeals are as follows:

- B (i) two appeals *vide* Civil Appeal No: 02(f)-45-06-2017(B) and Civil Appeal No: 02(f)-46-05-2017(B) where the appellant in both appeals is Gula Perak Berhad (Gula Perak); and the respondents respectively are Datuk Lim Sue Bing (Datuk Lim) and Yakin Tenggara Sdn. Bhd. (Yakin Tenggara) – (Gula Perak appeals);
- C (ii) two appeals *vide* Civil Appeal No: 02(f)-59-06-2017(B) and Civil Appeal No: 02(f)-60-06-2017(B) where the appellant in both appeals is AmBank (M) Berhad and the respondents are Datuk Lim, Gula Perak, Yakin Tenggara, Faithmont Estate Sdn. Bhd. (Faithmont) and RHB Bank Berhad (RHB) – (AmBank appeals);
- D (iii) two appeals *vide* Civil Appeals No: 02(f)-61-06-2017(B) and Civil Appeals No: 02(f)-65-06-2017(B) where the appellant in both appeals is Faithmont and the respondents are Datuk Lim and Yakin Tenggara respectively (Faithmont appeals).

In this judgment, parties will be referred to by their respective names.

E **Factual Background**

[2] Gula Perak was incorporated on 1 October 1968 as a public limited company by shares. It had obtained financial assistance from syndicated term loan lenders, namely – Aseambankers Malaysia, RHB Bank Berhad, AmBank (M) Berhad, DBS Bank LTD Cawangan Labuan, Alliance Merchant Bank Berhad, Malaysian Industrial Development Finance Berhad, Southern Bank Berhad, Affin Bank Berhad and Malayan Banking Berhad (the lenders).

[3] Gula Perak was not able to service the syndicated term loan facility. A civil suit (Kuala Lumpur High Court Suit No: D5-22-1648-2005) was filed by the lenders against Gula Perak and its guarantor, Datuk Lim. After a full trial, judgment was granted on 29 October 2010 in favour of the lenders. The judgment became final upon the dismissal of an application for leave to appeal to the Federal Court on 25 June 2011.

[4] On 15 March 2011, a company by the name Infra Purnama Sdn. Bhd. (“Infra”) presented a winding-up petition under s. 218 of the Companies Act 1965 at the Shah Alam High Court against Gula Perak on the ground of its inability to pay Infra a debt amounting to RM4,004,459.70. A copy of the winding-up petition and the affidavit verifying petition was forwarded by Infra’s solicitors to RHB’s solicitors. RHB’s solicitors thereafter filed a notice

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of intention to appear and to support the winding-up petition. However, Infra's petition was subsequently struck out by the court when Infra applied to withdraw it on the ground that Gula Perak had paid Infra's outstanding debt.

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[5] RHB being a judgment creditor of Gula Perak was however desirous to proceed with the winding-up petition. RHB thereafter applied to set aside the order striking out the winding-up petition. RHB was successful in its application and by a court order dated 7 June 2011 RHB was substituted as the petitioner in the winding-up petition. Alliance, Affin, DBS, AmBank, Maybank and CIMB Bank Berhad were supporting creditors to the winding-up petition.

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[6] On 1 March 2013, RHB's winding-up petition to wind up Gula Perak was granted by the court. Since the winding-up order, the affairs and management of Gula Perak was administered by court-appointed liquidators namely Ooi Woon Chee and Ong Hock An (later replaced by Mohamed Raslan Abdul Rahman).

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[7] As at 31 March 2010, Gula Perak was indebted to the amount of RM74,897,326.66 to AmBank and as at the date of its winding-up on 1 March 2013, Gula Perak was still indebted to AmBank to the total sum of RM81,037,450.62.

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[8] Initially, Gula Perak was granted a term loan of RM190,000,000 by AmBank under a term loan agreement dated 13 November 1997. Gula Perak defaulted payments and in view of settlement with AmBank, Gula Perak issued five year 3% redeemable secured bonds for a nominal value of RM90,124,000 on 8 October 1999 for the full and final settlement of the term loan. The bonds were secured by a legal charge in favour of AmBank, executed over an oil palm estate land known as Sitiawan Estate held under H.S. (D) 1668, P.T. No. 1058, Mukim Durian Sebatang, District of Hilir Perak, Perak Darul Ridzuan ("Lot 1058"). It followed that the charge was then substituted with a deed of assignment dated 17 October 2006.

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[9] Gula Perak remained in default of the repayment to AmBank. Following this string of defaults, AmBank sought to realise the deed of assignment but only to be hindered by a caveat lodged by Faithmont on the said land.

[10] Before the commencement of the winding-up proceeding against Gula Perak, on 25 March 2010, Faithmont initiated a civil action against Gula Perak in the High Court of Malaya at Kuala Lumpur *vide* Civil Suit No. S-24-636-2010 claiming for specific performance of a sale and purchase agreement dated 28 October 2005 in respect of the said land.

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A [11] In another related suit, Faithmont had on 13 April 2012 also filed a
suit against AmBank in respect of the said land in the High Court at Kuala
Lumpur *vide* Civil Suit No. 22NCVC-438-04-2012 for the removal of the
caveat on the said land. All the suits involved the same land and therefore
they were consolidated and full trial proceeded before Justice Kamaludin
B Said. In the midst of trial, the dispute was successfully mediated as a result
of which Gula Perak, Faithmont, and AmBank reached a compromise.

C [12] Enclosure 80 was an application by the liquidators of Gula Perak
pursuant to s. 236(1)(c) of the Companies Act 1965 for the High Court's
approval to enter into a compromise to sell off a piece of land in view of the
debt between Gula Perak, Faithmont and AmBank. The application was
opposed by Yakin Tenggara, a contributory of Gula Perak and Datuk Lim,
a preferred creditor in the sum of RM150,000 and an unsecured creditor in
the sum of RM28.2 million. On 4 November 2015, encl. 80 was allowed by
the High Court and a compromise order was obtained.

D [13] On 11 November 2015, one week after the compromise order was
obtained, parties then entered into a consent judgment before Justice
Kamaluddin Said, on the terms, on which date itself, RM2.6 million was
paid by the liquidators of Gula Perak to AmBank's solicitors, being 10% of
the redemption sum of RM26 million. The balance sum of RM23.4 million
E was paid on 23 March 2016.

F [14] On appeal to the Court Of Appeal by Yakin Tenggara and Datuk Lim,
the Court of Appeal allowed both their appeals and set aside the order of the
High Court with regard to the compromise. Aggrieved with the decision of
the Court of Appeal, Gula Perak, AmBank and Faithmont filed their
respective applications for leave to appeal to this court. On 4 May 2017, this
court granted leave to appeal in all six cases. Hence the present appeals
before us.

Leave Questions

G [15] Leave to appeal in all six cases were granted by this court on the
following questions:

Gula Perak's Appeals

H Whether a sale and purchase agreement to sell estate land to a purchaser
wherein it is a condition precedent that the transfer of the land will only
be effected to the purchaser after and subject to the approval of the Estate
Land Board contravenes section 214A(1) of the NLC.

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AmBank's Appeals

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(i) Whether section 214A of the National Land Code 1965 applies to a conditional or contingent contract for the sale and purchase of an estate land, where such conditional or contingent contract provides that any sale of such land is conditional upon and subject to the approval of the Estate Land Board?

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(ii) Whether the Court may hold that a sale agreement of estate land is void as no prior Estate Land Board approval for the transfer of such land was obtained prior to such agreement, notwithstanding that the Estate Land Board had already granted its approval for such transfer and the land already been transferred?

C

Faithmont's Appeals

(i) Where parties enter into a Sale and Purchase Agreement (SPA) involving 'estate land' (as defined in section 214A(11), National Land Code 1965 (NLC) with a condition precedent in the SPA that it is subject to obtaining the approval of the Estate Land Board (the Board):

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(a) Is such a conditional SPA in breach of section 214A(1) NLC when no prior approval is obtained from the Board before entering into the SPA?

(b) Does section 214A(1) NLC require approval of the Board before entering into the SPA failing which the SPA is void or illegal?

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(ii) Whether pursuant to a proper construction of section 214A(4) NLC, the conditional SPA is merely a manifestation of the proprietor "desiring to transfer, convey or dispose of in any manner whatsoever such land" for joint submission together with "the person to whom the land is to be transferred, conveyed or disposed" *vide* an application to the Board in Form 14D and accordingly such a conditional SPA is within the intent and scope of sections 214A(1) and 214A(4) of NLC?

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(iii) In the circumstances where the conditional SPA has been supplanted by a consent order duly recorded by the High Court between the proprietor "desiring" to transfer and "the person to whom the land is to be transferred" and such Consent Order is similarly subject to approval by the Board: whether the Consent Order complies with section 214A(1) and section 214A(4) of NLC.

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[16] All the leave questions in all the appeals though differently worded, come to one common issue, that is:

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Whether a conditional agreement to sell an estate land (SPA) to a purchaser with a condition precedent that the sale was subject to obtaining the approval of the Estate Land Board is in breach of s. 214A(1) of the NLC when no prior approval is obtained from the Board before entering into the said SPA?

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A [17] At the outset, for easy understanding of the matter at hand, it would be appropriate at this juncture to familiarise ourselves with the relevant provisions of s. 214A(1) of the NLC.

[18] Section 214A(1) of the NLC provides as follows:

B 214(A). Control of transfer of estate land

(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever, unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as “the Board”) established under subsection (3).

C [19] The conditional SPA in the present appeal was in the form of a compromise which was successfully mediated between Gula Perak (as the debtor), Faithmont (as the creditor) and AmBank (as the lender) in various ongoing suits between them at the Kuala Lumpur High Court which later was recorded as a consent judgment between the parties. Yakin was not a party to the said conditional SPA. Yakin contended that the compromise or the SPA was an illegal compromise simply because the parties to the compromise have yet to obtain the Estate Land Board’s approval under s. 214A of the NLC.

E **At The High Court**

[20] The learned judge of the Shah Alam High Court made her finding that the compromise or the SPA was not at all in contravention of the NLC and remains valid and enforceable between the parties thereto.

F [21] In her judgment, the learned judge said:

Let this Court be clear from this juncture that this section only stipulates that a transfer of estate land requires the Estate Land Board’s approval and a transfer without such approval shall render the transfer invalid and parties involved in the transfer shall be liable to an offence. The Section does not mention of any agreements to transfer estate land, but specifically the act of transferring the estate land. This is the distinction that Yakin had unfortunately failed to understand. The compromise itself was pre-conditioned with the attainment of the proper approval from the Estate Land Board. The compromise was entered in view of full compliance of the National Land Code. And such agreement is verily valid by law. Again, it is the act of transferring without approval that is an offence, not the agreement to transfer.

G [22] The learned judge distinguished this case with a Court of Appeal case of *Tai Thong Flower Nursery Sdn Bhd v. Master Pyrodor Sdn Bhd* [2014] 9 CLJ 74, and ruled as follows:

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Yakin had also placed a misconceived reliance on the decision of *Tai Thong Flower Nursery Sdn. Bhd. v. Master Pyrodor Sdn. Bhd.* [2014] 9 CLJ 74. The Court of Appeal decision here instead was in the favour of the Liquidators and nowhere in the favour of Yakin. In *Tai Thong's* case, the prevailing issue is not the agreement to transfer, but the sheer act of transferring without approval itself. Clearly the act of transferring estate land without approval contravenes the National Land Code. It is vivid that the Court of Appeal had employed many qualifications in explaining its decision so as to not lead to confusion, which remarkably, Yakin indeed is confused. The Court of Appeal had clearly held that an agreement to transfer estate land without prior approval of Estate Land Board is NOT void:

S. 214A of the NLC did not itself provide that an agreement to transfer, convey or dispose of estate land without the approval of the Estate Land was void.

Following this qualification, the Court of Appeal proceeded to hold that, it is instead the consequent act of transferring the estate land without approval that is in contravention with the National Land Code. The wording used was conjunctive, particularly the word “and”:

... any contract for such transfer, conveyance or disposal AND consequently any memorandum of transfer pursuant to such contract, was liable to be struck down as being void for illegality ...

It is only if the contract was performed and the transfer was effected without the proper approval that the entire transaction becomes null and void. The isolated agreement to transfer without prior approval is not at all legally wrong. Clearly the Court of Appeal in the case had emphasised on the ensuing and consequent transfer without approval rather than the singular and isolated act of entering into the agreement.

[23] The learned judge also relied on the decision of the Melaka High Court in the case of *Rengamah Rengasamy v. Tai Yoke Lai & Anor* [1998] 1 CLJ 987; [1998] 5 MLJ 260 in understanding the relevant part of s. 214A of the NLC and she concluded that “the provision does not intend to invalidate agreements to transfer, but to invalidate transfers in absence of approval. It was also held that there is absolutely nothing illegal to enter into an agreement in contemplation of the approval although approval has yet been obtained.”

[24] The conclusion made by the learned judge was that “Yakin and Datuk Lim have ultimately failed to prove their case against the notice of motion (encl. 80)” and “consequently, this court grant order-in-terms of encl. 80, for the liquidators to enter into the compromise between GPB (Gula Perak), the bank as well as Faithmont.

A At The Court Of Appeal

[25] On appeal, the Court of Appeal allowed the appeals and set aside the order of the High Court. The Court of Appeal disagreed with the learned High Court Judge, and was of the view that “the Legislative intent behind s. 214A(1) of the Land Code is clear, that it prohibits the transfer, conveyance or disposal of estate land “in any manner whatsoever” without first obtaining the approval of the Land Board.”

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[26] The relevant parts of the Court of Appeal’s judgment on the issue are reproduced as follows:

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(42) Assuming for a moment that Gula Perak and Ambank are right in their contention that the “agreement” to transfer, not being a “transfer” did not require prior approval of the Land Board and therefore not prohibited by section 214A(1), the question one has to ask is whether such agreement was an attempt by Gula Perak to “transfer”, to “convey” or to “dispose of” the land “in any manner whatsoever” within the meaning of section 214A(1).

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(43) We would think so. Although no actual “transfer” took place at the time of the compromise, in the sense that the land was not registered in the name of Faithmont, the simple truth is that the *consensus ad idem* and the common intention between the parties was to “transfer”, to “convey” or to “dispose of” the land without first obtaining the approval of the Land Board as required by section 214A(1) of the Land Code.

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(44) There is no mistaking their intention that the approval from the Land Board was only to be obtained later, ie, after the compromise had been approved by the court, but by the time the compromise was approved on 4.11.2015, 10 years had passed since the agreement was executed on 28.10.2005. That is a very long delay by any measure of time.

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(45) Clearly this was an attempt to “transfer, convey or dispose of” estate land without first obtaining the approval of the Land Board, an offence under section 214A(10A)(a) of the Land Code. The attempt is obvious as Rm5.7 million had been paid towards the purchase price, and Faithmont had taken vacant possession of the land on 16.11.2005, barely one month after executing the agreement on 28.10.2005.

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(46) For all intents and purposes, the land had been “disposed of” to Faithmont since 16.11.2005 without the approval of the Land Board. What the compromise sought to achieve was to validate that unlawful act of disposal. Like the execution of the agreement on 28.10.2005, the compromise was yet another attempt by Gula Perak to circumvent the strict requirement of prior approval under section 214A(1) of the Land Code.

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(47) For a compromise under section 236 of the Companies Act to be valid, it must be lawful. A compromise to do an unlawful act or to validate an unlawful act is null and void and has no effect whatsoever and we can say without fear of contradiction that neither the court nor the committee of inspection nor any other authority for that matter can legalize an otherwise illegal act. The compromise order is therefore void for illegality under section 24 of the Contracts Act 1950.

[27] The Court of Appeal further held:

In the context of contingent contracts involving estate land, we are inclined to think that it will be against the spirit and policy consideration behind section 214A(1) of the Land Code to allow estate landowners to execute sale and purchase agreements without first obtaining the approval of the Land Board. If Parliament has expressed a clear intention to prohibit transfer, conveyance or disposal of estate land “in any manner whatsoever” without the prior approval of the Land Board on pain of criminal prosecution, it stands to reason that an agreement to “transfer, convey or dispose of” estate land without first obtaining the approval of the Land Board will likewise be against the spirit and policy consideration behind section 214A(1) of the Land Code.

[28] The Court of Appeal also held:

(70) If the legislature had intended to exempt conditional agreements from the operation of section 214A(1), it would have said so in clear terms. There is none in the whole of section 214A. On the contrary, it provides through section 214A(10A)(a) that it is an offence to even attempt to “transfer, convey or dispose of any manner whatsoever any estate land in contravention of section (1).

(71) We are therefore unable to agree with *Rengasamy* that a conditional contract to sell estate land would only become void if the Land Board refuses approval of the sale. In our view such contract of sale is void from the beginning if no approval from the Land Board had first been obtained prior to the execution of the agreement.

(72) The corollary is that the consent judgment entered into between the parties on 11.11.2015 pursuant to the compromise order is void, not because Gula Perak breached any term of the compromise order but because it was an agreement by Gula Perak to “transfer, convey or dispose of” estate land without first obtaining the approval of the Land Board, which as we said is an offence under section 214A(10A)(a) of the Land Code and therefore a breach of section 214A(1).

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A [29] The Court of Appeal was in agreement with the following pronouncement in *Tai Thong (supra)*:

The presence of the words “desiring to transfer, convey or dispose of in any manner whatsoever such land” and the words “to whom the land is to be transferred, conveyed or disposed of” (emphasis added) in sub-s. 214A(4) clearly meant that the obtaining of the approval must be done before the execution of the agreement by which the land would be conveyed or disposed of.

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C [30] The Court of Appeal also expressed its agreement with Yakin that based on the illegal act of Gula Perak, Faithmont and AmBank in entering into the compromise without first obtaining the approval of the Land Board, the court is empowered to reverse the compromise order and to reinstate the position of the parties to their positions prior to the grant of the compromise order.

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[31] In conclusion, the Court of Appeal allowed Yakin and Datuk Lim’s appeals and set aside the decision of the High Court approving the compromise and ordered that the position of the parties were to be restored to the position they were in prior to the compromise order.

Appellants’ Contentions

E [32] The appellants shared a common contention in their respective appeals. It can be summarised as follows:

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(a) section 214A(1) of the NLC was legislated for the express purpose of ensuring that no estate land is transferred, conveyed or disposed of without approval first being obtained from the Estate Land Board. It was not intended to be a bar to preclude parties from even entering into a conditional SPA involving estate land; this reasoning is consistent with the language and spirit of s. 214A(1) of the NLC which provides that there can be no transfer of estate land without approval of the Estate Land Board having first been obtained; and

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(b) the SPA being a conditional agreement cannot therefore be declared as void and illegal. The SPA will only become null and void if the Estate Land Board had refused or did not grant approval for the transfer of the said land to be registered, and yet parties proceeded to transfer it.

Respondents’ Contentions

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[33] The crux of the respondents’ contention was that s. 214A(1) of the NLC was as plain and clear as language can express it. It prohibits any agreement to transfer, convey and dispose of estate land without first obtaining the approval of the Estate Land Board. In the present case, no such

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approval was obtained prior to the entering of the compromise or the SPA. Thus, the Court of Appeal had correctly held that the compromise or agreement contravenes s. 214A(1) of the NLC and therefore void for illegality. A

[34] It was also contended by the respondents that s. 214A(1) of the NLC is strictly worded and failure to comply with the said section is an offence under s. 214A(10A) of the NLC. Citing the case of *Tai Thong (supra)* and the provisions of s. 214A(4) of the NLC, this clearly mean that the Land Board's approval must first be obtained before the execution of any agreement to dispose of the land. The words "in any manner whatsoever" appearing in the section cover not only the actual transfer but any agreement to transfer the estate land. B
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[35] The respondents concluded that the agreement in question or the compromise as well as the related consent order in the present case ought to be rendered illegal, void and unenforceable as they are sufficiently linked to the statutory prohibition of s. 214A(1) of the NLC. D

Our Decision

[36] The crux of all the appeals before us revolves on the interpretation or construction of s. 214A(1) of the NLC. To start with, it would be pertinent to highlight some of the basic principle followed by the court in giving an interpretation to statutes passed by Parliament. E

[37] On the issue of an interpretation to statutes, this court in *Siva Segara Kanapathi Pillay v. PP* [1984] 2 CLJ 95; [1984] 1 CLJ (Rep) 353, at p. 357 had outlined the following basic rule for our guidance: F

It is a well-known principle of construction of statute that the intention of Parliament must be determined from the words used and in construing the words used, it is sometimes necessary to construe the meaning of the words, not by bare reading of the words themselves but by looking also at the rest of the words in the section. G

[38] The principle of statutory interpretation is not codified. It is governed by the common law and is therefore capable of endogenous development by the courts to meet new technical problems or social needs. In general, the court's function is to ascertain the intention of Parliament and that is done from the language that Parliament has used. (Source: "*The Changing Judicial Role; Human Rights, Community Law and the Intention of Parliament*" by Daine Mary Arden – Member of the Court of Appeal of England and Wales). H

[39] This court had recently touched on this issue in *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd. v. Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* [2017] 4 CLJ 265; [2017] 2 ILR 230 where it was held: The function of a court when construing an Act of Parliament is primarily to interpret the I

A statute in order to ascertain what the Legislative intent is; and this is primarily done by reference to the words used in the provision. *Crease on Legislation* (9th edn. 2008) at p. 611 states:

B the cardinal rule for construction of legislation is that it should be construed according to the intention expressed in the language used. So the function of the Court is to interpret legislation “according to the intent of them that made it” and that intent is to be deduced from the language used.

C [40] Section 214A(1) of the NLC was inserted by the National Land Code (Amendment) Act 1969 (Act 26) to prevent fragmentation of estate land by dealing with the land in question. A good guidance in interpreting this section was laid down by Jemuri Sarjan SCJ in *Kumpulan Sua Betong Sdn Bhd v. Dataran Segar Sdn Bhd* [1992] 1 CLJ 20; [1992] 1 CLJ (Rep) 150; [1992] 1 MLJ 263 (SC) where His Lordship had made the following observation:

D It is our view that, in accordance with established canon of construction of statutes, s. 214A(1) should not be construed in isolation, divorced from other provisions of the section. It is well established that every section of an Act must be considered as a whole and self-contained with the inclusion of saving clauses and provisos. Subsections in a section must, therefore, be read as part of an integral portion and being inter-dependent, each portion throwing light, if need be, on the rest, and harmonious construction should be placed on their words for the purpose of giving effect to the legislative intent and object. As we understand it, the object of s. 214A is to prevent and prohibit the fragmentation of estate land within the meaning of sub-s. (11) ... at the material time.

F [41] “It is well-settled that, when a statute is susceptible of two or more interpretations, normally that interpretation should be accepted as reflecting the will of the Legislature which is presumed to operate most equitably, justly and reasonably as judged by the ordinary and normal conceptions of what is right and what is wrong and of what is just and what is unjust.” (per. – Augustine Paul FCJ in the case of *Ex P Guan Teck Sdn. Bhd. (substituting Lim Oo Guan, Deceased)* [2010] 4 CLJ 289; [2010] 1 MLJ 1.

H [42] Section 214A of the NLC itself is quite a long section. It contains 12 subsections. The general title of s. 214A is “Control of transfer of estate land.” The actual intent and object of s. 214A can be gathered from the Parliamentary Hansard dated 25 May 1972 when the section was tabled in Parliament. It was said by the Minister concerned as follows:

I Berkenaan dengan pindaan-pindaan kepada Seksyen 214(A) pula maka pindaan itu adalah bertujuan untuk mengawal dengan lebih ketat lagi pemecahan ladang atau kumpulan ladang-ladang yang berkembar yang luasnya tidak kurang daripada 500 ekar. Di bawah pindaan-pindaan yang dicadangkan itu, maka adalah menjadi satu kesalahan yang boleh

dihukum di dalam mahkamah bagi sesiapa yang memindah milik ladang atau cuba memindah milik ladang tanpa mendapat kebenaran terlebih dahulu dan boleh juga dihukum dengan hukuman penjara dan juga didenda, pada hal di bawah Seksyen 214(A) sebelum dipinda dahulu yang melakukan kesalahan itu tidaklah dapat dihukum di mahkamah.

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[43] The emphasis from the above speech is that “adalah bertujuan untuk mengawal dengan lebih ketat lagi pemecahan ladang atau kumpulan ladang-ladang yang berkembar yang luasnya tidak kurang daripada 500 ekar”. In short, the sole object or intent of the amendment tabled was to prohibit or prevent fragmentation of estate land. The court can only use the trite tools of interpretation of statute which, in essence, is to give it a meaning which promotes the objective of the statute concerned.

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[44] Our view is that in order to correctly interpret s. 214A(1) of the NLC we need to read and consider the section as a whole, not only sub-s. 214A(1). That subsection should not be construed in isolation. All the subsections in the section are inter-dependent of each other. Each subsection throws light on the next. All the 12 subsections relate to the same object or intent ie, to control and prevent fragmentation of estate land.

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[45] For that purpose, we will now reproduce the whole of s. 214A of the NLC:

214A. Control of transfer of estate land

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(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever, unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as “the Board”) established under subsection (3).

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(2) The Registrar shall not register any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board.

(3) For the purpose of this section there shall be established an Estate Land Board consisting of:

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(a) the State Secretary, who shall be the Chairman;

(aa) the State Director, who shall be the Secretary;

(b) not more than four members appointed by the State Authority from amongst members of the Public Service.

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- A (4) The proprietor or any co-proprietor of any estate land desiring to transfer, convey or dispose of in any manner whatsoever such land shall, together with the person or persons to whom the land is to be transferred, conveyed or disposed of, jointly submit an application to the Secretary of the Board in Form 14D.
- B (5) The Board may approve an application made under sub-section (4) and shall have power to refuse or cancel an approval of any such application if:
- (a) It is satisfied that any statement or representation made in the application is false or incorrect; or
- C (b) It is satisfied that the applicant fails or refuses to comply with any direction given or restrictions or conditions imposed by it; or
- (c) It appears to it that the approval of the application will not be in the public interest.
- D (6) Decision of the Board shall be by majority of votes; and in the case of equality of votes the Chairman shall have a casting vote.
- (7) Before making any decision the Board may as it thinks fit call any person to give any statement before it or produce any document to be examined by it.
- E (7A) The decision of the Board shall be conveyed by the Secretary of the Board to the applicants referred to in sub-section (4) as expeditiously as possible.
- (8) Where approval of an application under sub-section (4) is refused or cancelled by the Board, the applicant may, within 30 days after the communication to him of the Board's decision of such refusal or cancellation of appeal in writing to the State Authority.
- F (9) The State Authority may confirm or reverse the decision of the Board:
- G Provided that where the decision of the Board is reversed by the State Authority, the State Authority may give such direction or impose, such re-striction or condition as it may think fit.
- H (10) Any person who obtains or attempts to obtain approval of the Board by knowingly making or producing or causing to be made or produced any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise or who fails or refuses to comply with any direction, restriction or condition imposed on him shall be guilty of an offence and shall on conviction be liable to a fine not exceeding RM10,000 and where the offence is a continuing one shall be further liable to a fine of not exceeding RM1,000 in respect of each day the offence is committed.
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- (10A) (a) Any person who transfers, conveys or disposes of or attempts to transfer, convey or dispose of in any manner whatsoever, any estate land in contravention of sub-section (1), shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than one year and not more than three years and to a fine not exceeding ten thousand ringgit. A
- (b) For the purposes of this section, the execution of an agreement to convey or dispose of the whole of an estate to two or more persons, or to convey or dispose of any portion or portions of an estate land to one or more persons, without the approval of the Board, shall be conclusive proof that the estate land is conveyed or disposed of in contravention of sub-section (1): and any act to demarcate an estate land or to cause or permit the demarcation of estate land is conveyed or disposed of in contravention of sub-section (1); shall be *prima facie* proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of sub-section (1). B
- (11) For the purpose of this Act “estate land” means any agricultural land held under one or more than one title the area or the aggregate area of which is not less than 40 hectares and the alienated lands constituting such area are contiguous. C
- (12) For the purpose of this Act, alienated lands held under final title or qualified title or a combination thereof, shall be taken to be contiguous notwithstanding that they are separated from each other only by such land as is used, required or reserved for roads, railways or waterways. D
- [46] The main thrust of the appeals relates to the SPA dated 28 October 2005 entered into between Gula Perak and Faithmont. The relevant terms of the SPA were later recorded as consent orders in the ongoing suits between Gula Perak, AmBank and Faithmont at the Kuala Lumpur High Court. The salient points of the SPA are as follows: E
- (i) the land in question related to “all that parcel of oil palm estate”. It involved the whole area of the land 20225, Lot No. 11447, Mukim Durian Sebatang, District of Hilir Perak, Perak Darul Ridzuan. It is not an agreement which has the effect of fragmentation of the said land; F
- (ii) the intended sale was subject to the conditions and restrictions expressed or implied in the document of title and also subject to the terms and conditions of the agreement itself; G
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- A (iii) clause 2.1(b) of the agreement had an express term to the effect that Gula Perak, as the vendor shall first obtain the approval of the Land Board before any transfer of the said land can be effected;
- (iv) the proviso to cl. 2.1 provided to the effect that the SPA shall become unconditional on “the Unconditional Date” ie, the last date on which the several matters stipulated in cl. 2.1 (a)(b) and/or (c), which include the approval of the Land Board having been obtained;
- B
- (v) it is also provided in cl. 2.1 that if the condition relating to obtaining the Land Board’s approval was not fulfilled within the stipulated period, the vendor shall be at liberty to rescind the agreement and thereafter return all monies previously paid by Faithmont to the vendor (which includes the amount of RM5.7 million which had been paid to the vendor) and Faithmont as the purchaser shall redeliver vacant possession of the land to the vendor. Thereafter the vendor shall be at liberty to resell or deal with the said land as it shall see fit;
- C
- (vi) in cl. 6, it is provided that Faithmont’s solicitors shall not present the Memorandum of Transfer in respect of the land for registration unless Faithmont have fully paid the balance sum to the vendor’s solicitors pursuant to the terms of the agreement and the balance sum shall be paid by Faithmont on or before two months from the “Unconditional Date”.
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- E [47] Reading the SPA as a whole, it is not in dispute that the agreement was a conditional or contingent agreement, ie, conditional upon the approval being obtained from the Land Board for the transfer of the land. Being a conditional agreement it was not enforceable until all the conditions have been fulfilled. If the conditions are not fulfilled then the said agreement would be of no effect and all monies paid by Faithmont to the vendor were to be returned and vacant possession to be redelivered to the vendor. The agreement shall not take effect unless and until all the conditions are fulfilled. (see: Federal Court’s decisions in *National Land Finance Co-Operative Society Ltd. v. Sharidal Sdn. Bhd.* [1983] 2 CLJ 76; [1983] CLJ (Rep) 282; [1983] 2 MLJ 211, and *Khatijah Abdullah & Ors v. Mohd. Isa Biran* [2017] 7 CLJ 513; [2017] 2 MLJ 1; s. 33 of the Contracts Act 1950).
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- G [48] In the present case, the State Authority’s consent as well as the Land Board’s approval had already been obtained on 20 November 2015 and 29 February 2016 respectively, before the said land was registered and transferred to Faithmont on 23 March 2016.
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- [49] Section 214A(1) of the NLC does not prohibit the making of a conditional or contingent agreement to sell an estate land which has an express term incorporated in it that the intended sale is subject to the parties obtaining the approval of the Land Board. The prohibition under s. 214A(1)
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is against an act of transfer, conveyance or disposal of estate land without the approval of the Land Board. The SPA being a conditional or contingent agreement is therefore not illegal for non-compliance with the provisions of s. 214A(1) of the NLC. Until the approval of the Land Board was obtained and the pre-condition was then fulfilled, future performance under the agreement remained unenforceable. The SPA shall not take effect unless and until the condition is fulfilled when the Land Board's approval is obtained. The SPA by itself did not have the effect of transferring or disposing the said land from Gula Perak to Faithmont.

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[50] Subsection 214A(2) throws some light on the interpretation of sub-s. 214A(1). It prohibits the Registrar of Land Title from registering any instrument of transfer of estate land unless such instrument is accompanied by a certificate of approval granted by the Land Board. The clear inference from this subsection is that the element of control or prohibition on transfer, conveyance or disposal of estate land starts effectively at the stage of forwarding all the relevant documents to the Registrar of Land Title for registration of the transfer of title. By reading sub-s. (1) and sub-s. (2) together one will get the indication that the Land Board's approval needs only to be obtained at the stage before registration of title is to be done, but not before that.

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[51] Subsection 214A(4) is also relevant in interpreting sub-s. 214A(1). It contemplates that both the intended vendor and purchaser shall jointly submit an application to the Secretary of the Land Board in Form 14D for its approval. It is a mandatory statutory requirement that both of them must jointly do in applying for the approval.

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[52] The issue relating to joint application for the approval was considered by Augustine Paul JC (later FCJ) in the case of *Rengamah Rengasamy v. Tai Yoke Lai & Anor* [1998] 1 CLJ 987, where His Lordship had this to say (with which we agree):

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The submission of the plaintiff gives the impression that there is a prohibition against an owner of estate land entering into any form of agreement with an intended purchaser before having first obtained the approval of the Estate Land Board. With respect, I am unable to agree with that view. Section 214A(4) clearly contemplates that the owner of an estate land must make the application for approval jointly with the intended purchaser.

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In fact one of the particulars required to be filled in the prescribed form is the name and address of the intended transferee or purchaser. Thus the existence of an intended purchaser is a pre-requisite for making an application for approval to the Estate Land Board. Before an intended purchaser can come into existence there must have been negotiations and agreement between him and the proprietor on the price and other relevant

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- A terms. Surely a record of the negotiations requires to be kept to facilitate completion of the agreement when the appropriate time comes. This can be best achieved by the execution of a provisional or conditional agreement between them. This, in my opinion, is contemplated by s. 214A(4).
- B [53] Form 14D requires *inter alia* the following particulars to be filled for the consideration of the Land Board, *inter alia*:
- (a) name of the proprietor of the land;
 - (b) name and address of the intended purchaser; and
 - (c) purpose of the transfer.

The form is to be signed both by the proprietor as well as the purchaser who have to certify that those information given are correct.

- D [54] It can safely be concluded that before Form 14D is submitted to the Land Board, it must be fully completed for the Board's consideration. The requirement to state the name and address of the intended purchaser in the said form as well as the signature of the purchaser shows that the existence of an intended purchaser is a pre-requisite for making an application for approval to the Land Board. Section 214A of the NLC contemplates that a conditional agreement between the proprietor of the land and the intended purchaser would be in place at the time when Form 14D is to be jointly submitted to the Board for its approval. It would only make practical sense if the proprietor and the intended purchaser had first entered into a conditional agreement even in a simple form before any application to the Land Board for approval is possible. This would enable the Land Board to consider the application, the terms of the sale and purchase and the genuineness of the transaction. The court ought to have taken a common sense approach and consider the practical aspect of commercial transactions involving the sale and purchase of estate lands.

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- G [55] The Court of Appeal in its judgment had indicated that Parliament by enacting s. 214A(1) of the NLC had expressed a clear intention to prohibit transfer, convergence or disposal of estate land in any manner whatsoever without the prior approval of the Land Board on pain of criminal prosecution; and therefore it stands to reason that such an agreement will likewise be against the spirit and policy consideration behind s. 214A(1) of the NLC.

- H [56] With respect we are not in agreement with the Court of Appeal on this point. The Court of Appeal relied extensively on the spirit and policy consideration as well as the Legislative intent behind s. 214A(1) of the NLC.

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[57] In our view, the spirit and policy consideration as well as the Legislative intent in enacting a statutory provision can best be declared in the words used in the statute itself. Where the words are unambiguous, the court is bound to give effect to them. (see: *Sussex Peerage Case* (1844) 11 CI & Fin 85; and *PP v. Tan Tatt Eek & Other Appeals* [2005] 1 CLJ 713; [2005] 2 MLJ 685.)

[58] “If the language is clear and unambiguous and applies accurately to existing facts, it shall accept the ordinary meaning, for the duty of the court is not to delve deep into the intricacies of the human mind to ascertain one’s undisclosed intention, but only to take the meaning of the words used by him, that is to say his expressed intentions.” (see: *Kamala Devi v. Takhatumal* AIR 1964 SC 859; as adopted and affirmed by this court in *Lembaga Hasil Dalam Negeri Malaysia v. Alam Maritim Sdn. Bhd.* [2014] 3 CLJ 421; [2014] 2 MLJ 1).

[59] The same principle was emphasised by the House of Lords in *Farrell v. Alexander* [1976] 2 All ER 721 (which was later adopted and applied by this court in *Generation Products Sdn. Bhd. v. Majlis Perbandaran Klang* [2008] 5 CLJ 417; [2008] 6 MLJ 325) as follows:

Since the draftsman will himself have endeavored to express the parliamentary meaning by words used in the primary and most natural sense which they bear in that same context, the court’s interpretation of the meaning of the statutory words used should thus coincide with what Parliament meant to say.

The first or ‘golden’ rule is to ascertain the primary and natural sense of the statutory words in their context, since it is to be presumed that it is in this sense that the draftsman is using the words in order to convey what it is that Parliament meant to say. They will only be read in some other sense if that is necessary to obviate injustice, absurdity, anomaly or contradiction, or to prevent impediment of the statutory objective.

[60] Applying the above well-established principle to the facts and circumstances of the present case, we are of the view the Court of Appeal erred in law in its interpretation that the Legislative intent behind s. 214A(1) of the NLC was to prohibit any agreement, including a conditional or contingent agreement for the transfer, conveyance or disposal of estate land without obtaining prior approval of the Land Board. The Court of Appeal had also erred in law in holding that the conditional SPA was against the spirit and policy of s. 214A(1) of the NLC in that estate land owners are precluded from executing conditional SPA without first obtaining the Land Board’s approval.

A [61] The Court of Appeal relied heavily on the decision of the Court of
Appeal in *Tai Thong Flower Nursery Sdn. Bhd. v. Master Pyrodor Sdn. Bhd.*
[2014] 9 CLJ 74 (“*Tai Thong*”) which unanimously held that the moment
an agreement to transfer estate land is executed without approval of the Land
Board, it became proof that the transfer contravenes s. 214A(1) of the NLC;
B and the execution of the agreement was void.

[62] The Court of Appeal, in para. 77 of its judgment, agreed with the
pronouncement in *Tai Thong (supra)* that the obtaining of the approval of the
Land Board must be done before the execution of the agreement by which
the land would be transferred, conveyed or disposed of.

C [63] Our view is that the approach taken in *Tai Thong (supra)* cannot be
relied upon and therefore not applicable to the facts of the present case. The
facts and real issues in *Tai Thong (supra)* are different and can easily be
distinguished.

D [64] In *Tai Thong (supra)* the Court of Appeal did not deal with the issue
of a conditional or contingent agreement involving estate land, as in the
present case. The issue that arose in *Tai Thong (supra)* was whether the Land
Board’s approval had in fact been obtained prior to the transfer of the land
in question and registered in the plaintiff’s name. In *Tai Thong (supra)*, the
challenge by the defendant was whether the estate land had been transferred
E and registered in the plaintiff’s name without obtaining the Land Board’s
approval in contravention of s. 214A(1) of the NLC. In other words, the core
issue there related to the legality of the actual act of transferring or registering
of the land in question in the plaintiff’s name, before the prior approval by
the Land Board; not the legality of a conditional sale and purchase agreement
F which was subject to a pre-condition that the transfer can only be effective
upon getting the approval from the Land Board. In the present case, the
transaction has not reached the stage of the actual act of transfer and
registration of the land in question yet.

G [65] We are in agreement with the majority decision of the Court of Appeal
in *Vellasamy Pennusamy & Ors v. Gurbachan Singh Bagawan Singh & Ors* [2012]
2 CLJ 712; [2010] 5 MLJ 437 which held, *inter alia*, that s. 214A(1) of the
NLC does not prohibit the execution of a conditional agreement for sale of
estate land. We share the same sentiment with the Court of Appeal in that
case as pronounced below:

H There is no need to obtain approval first before entering into any form
of agreement with the intended purchaser. The agreement in this case
accorded with the language and spirit of s. 214A(1) of the NLC as it
provides that there can be no transfer of the land, without approval of the
Estate Land Board having first been obtained. The agreement, being a

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conditional agreement, was therefore not illegal, and could not be declared null and void. (Emphasis added). It would only become null and void if the Estate Land Board refused approval of the sale of the land.

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[66] The procedural steps that need to be taken for parties to comply with the requirements of s. 214A of the NLC involving any transfer of estate land had been correctly laid out by the Court of Appeal in *Vellasamy's* case, (with which we agree) as follows:

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The rigmarole to comply with the provisions of s. 214A of the NLC would be as follows. Firstly, the parties have to enter into a sale agreement. Secondly, when the parties have completed all the mutual obligations under the contract, then they are ready to transfer the property. Thirdly, it is at this point of time, that the parties apply for the statutory consent. Fourthly, after obtaining the statutory consent, the land is duly transferred and registered in the name of the purchaser. However, a caveat must be incorporated. If and only if for some reason the statutory consent is refused, then the sale will fall through.

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[67] In a more recent case, this court in *Khatijah binti Abdullah (supra)* made a ruling which in effect supports our finding on s. 214A(1) of the NLC. It was ruled, *inter alia*:

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(29) The requirement for consent to transfer from the State Authority is a condition precedent which must be fulfilled before any transfer of the Land is possible. Until fulfilled by the respondent, the SPA shall not take effect and the sale could not be completed. The trial judge is correct in his observation that any transfer of the Land in breach of the restriction in interest would be incapable of registration.

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(24) Learned counsel for the appellants had cited the case of *National Land Finance Co-operative Society Ltd b Sharidal Sdn Bhd (supra)* in support of his submissions that failure to fulfill the condition precedent rendered the SPA void and enforceable. In that case, the Federal Court had said that where parties had entered into a sale with a condition that such sale is contingent upon approval from another authority over which the parties have no control, such a condition is a condition which is known in the law of contract as a 'contingent condition' the effect of which is that the contract shall not take effect unless and until the condition is fulfilled.

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(29) Likewise in the present appeal, we find that requirement for consent to transfer from the State Authority is a condition precedent which must be fulfilled before any transfer of the land is possible. Until fulfilled by the respondent, the SPA shall not effect and the sale could not be completed.

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[68] Subsections 214A(10A)(a) and 214A(10A)(b) of the NLC were raised by the parties during their submissions before us. The Court of Appeal relied on sub-s. 214A(10A)(a) of the NLC to support its finding that the SPA in question contravened s. 214A(1) of the NLC and therefore the parties had committed an offence thereunder. It was ruled by the Court of Appeal that

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- A the SPA was an “attempt” to transfer, convey or dispose an estate land “in
contravention of sub-s. (1)”. Subsection 214A(10A)(a) creates an offence on
any person who transfers, conveys or disposes of or attempts to transfer,
convey or dispose in any manner whatsoever, any estate land in
contravention of sub-s. 214A(1) of the NLC. It must be noted that the offence
B relates to an act of transfer, conveyance or disposal or its attempt “in
contravention of sub-s. (1)”. If the transfer, conveyance or disposal or its
attempt does not contravene sub-s. (1), then there is no offence committed
under sub-s. 214A(10A)(a). In the present case, as we have highlighted
above, the SPA was not in breach of sub-s. 214A(1) as it was only a
C conditional agreement subject to the approval of the Land Board being
obtained by the parties. It was not an outright sale of the land. If the approval
of the Land Board was not obtained the SPA would be ineffective. Therefore,
the penalty provision in sub-s. 214A(10A)(a) is irrelevant and not applicable.
- D [69] On the issue of sub-s. 214A(10A)(b) of the NLC, the Court of Appeal
had duly considered the provision and ruled that the said subsection is not
applicable to the facts of the present case. We agree with the ruling made.
At paras. [52] and [53] of its judgment, the Court of Appeal held that:
- E (52) The effect of the provision is to relieve the party wishing to prove
breach of section 214A(1) of the burden of adducing *prima facie*
evidence of such breach. Proof of execution of the agreement is
sufficient. If Yakin Tenggara’s reliance on this part of the judgment
is to contend that the execution of the agreement on 28.10.2005 and
the consent judgment entered into on 11.11.2015 pursuant to the
compromise order provide proof that Gula Perak had infringed
section 214A(1), then we must say that the reliance is misplaced.
- F (53) Section 214A (10A)(b) only applies where the conveyance or
disposal of estate land is to two or more persons (where it involves
the whole of the estate land), and to one or more persons (where
it involves any portion or portions of the estate land). But that is
not the factual matrix of the case before us, which was an agreement
G to transfer the whole of the estate land to only one party, ie, to
Faithmont. This takes the case outside the scope of section 214A
(10A)(b). Yakin Tenggara cannot therefore rely on the execution of
the agreement as *prima facie* proof that section 214A(1) had been
infringed.
- H [70] On this issue, we share the same view with learned counsel for Gula
Perak that in fact, there is no transfer of the property without the approval
of the Estate Land Board in this case. There is also no attempt to transfer the
property without the approval of the Estate Land Board as the SPA was
conditional upon the approval of the Estate Land Board and if such approval
was not obtained, the SPA would not be completed and as such, there is no
I attempt to transfer estate land in contravention of s. 214A(1) of the NLC.

Conclusion

[71] In the upshot, we hold the view that sub-s. 214A(1) of the NLC does not prohibit a conditional agreement entered into between parties, so long as the general consensus between them was that no transfer of the said land was to be effected until the Land Board's approval was obtained. The said conditional agreement would not take effect unless and until the condition precedent was fulfilled.

[72] Based on the facts and circumstances of the present case, the SPA in question being a conditional agreement did not contravene sub-s. 214A(1) of the NLC and therefore not illegal. It could not be declared null and void. Subsection 214A(1) of the NLC was not intended to bar parties from entering into a conditional SPA involving an estate land. In short, there is no need to obtain an approval of the Land Board first before entering any form of conditional agreement with the intended purchaser involving a sale of estate land.

[73] The conditional SPA in the present case is merely a manifestation of the vendor (Gula Perak) desiring to transfer, convey or dispose of such land to be followed by joint submission with Faithmont to apply for an approval of the Land Board *vide* an application in Form 14D and as such the said SPA as well as the consent order were within the intent and scope of ss. 214A(1) and 214A(4) of the NLC.

[74] We therefore allow all the six appeals with costs. We set aside the related decisions and order of the Court of Appeals. This decision is by majority of 3:2 of Justice Ramly Hj Ali, Justice Azahar Mohamed and Justice Alizatul Khair Osman Khairuddin, while the minority decision is by Justice Zulkefli Ahmad Makinudin and Justice Balia Yusof Hj Wahi.

[75] We make a consequential order that the private caveat lodged by Tan Sri Elias Omar, Director of Gula Perak pursuant to presentation No. 3198/2018 on 5 March 2018 to be forthwith removed by the Registrar of Land Office, Perak, upon service of the order of this court pursuant to s. 417 of the NLC.

[76] Costs (subject to allocator fee):

- (i) For Gula Perak's appeals – costs of RM100,000 for both appeals to be paid by the respondents therein;
- (ii) For AmBank's appeals – costs of RM100,000 for both appeals to be paid by the respondents therein; and
- (iii) For Faithmont's appeals – costs of RM100,000 for both appeals to be paid by the respondents.