

**DALAM MAHKAMAH TINGGI MALAYA DI SHAH ALAM
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA
SAMAN PEMULA NO: BA-24NCvC-570-04/2021**

Dalam Perkara rumah-rumah nelayan dan premis perniagaan hasil laut di sepanjang sungai Bagan Sungai Yu;

Dan

Dalam Perkara Mengenai Tanah yang dipegang di bawah Hakmilik Strata HS(D) No. 580954 Lot PT No. 821, Pekan Pasir Penambang, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan (“Tanah tersebut”)

Dan

Dalam Perkara Mengenai Seksyen 44 Akta Relif Spesifik, 1950;

Dan

Dalam Perkara Mengenai Seksyen 49 dan 382A Kanun Tanah Negara 1965;

Dan

Dalam Perkara Mengenai Aturan 92 Kaedah-Kaedah Mahkamah 2012

ANTARA

1. **TIU CHEE TUAN**
(NO. K/P : 800311-10-5113)
2. **TIU CHEE CAO**
(NO. K/P : 830108-10-5385)
3. **TIU CHEE HONG**
(NO. K/P : 780707-10-5237)
4. **TIU CHING LAI**
(NO. K/P : 640926-10-6809)
5. **TIU TECK CHAI**
(NO. K/P : 920905-10-5563)
6. **TIU TECK HUAT**
(NO. K/P : 910210-10-5429)
7. **NINETY THREE SOON LEE SDN BHD**
[NO. PENDAFTARAN : 200503134826 (SA0015677-D)]
8. **ONG CHIN LI**
(NO. K/P : 670302-10-6437)
9. **AMRAN BIN OMAR**
(NO. K/P : 720509-09-5037)
10. **MUHAMMAD ZULKARNAIN BIN SUHAIMI**
(NO. K/P : 910517-10-5669)
11. **TEO HUA LAM**
(NO. K/P : 830413-10-5883)

12. TEO HUA JIANG
(NO. K/P : 850811-10-6089)

13. TEO HUA YUAN
(NO. K/P : 881123-43-5657)

14. LIM HWA YU
(NO. K/P : 750112-10-5177)

15. KOR SAW LEE
(NO. K/P : 790709-10-5336)

16. CHIAM CHUAN HOCK
(NO. K/P : 640108-10-5089)

17. CHAN KIANG YANG
(NO. K/P : 940205-10-6459)

18. CHAN KIANG TAT
(NO. K/P : 890511-10-5961)

..... PLAINTIF-
PLAINTIF

DAN

1. PENTADBIR TANAH DAN DAERAH KUALA SELANGOR

2. PIHAK BERKUASA NEGERI SELANGOR

3. PENGARAH UKUR DAN PEMETAAN NEGERI SELANGOR

4. KERAJAAN NEGERI SELANGOR

5. **GABUNGAN MELUR SDN BHD**
[NO. SYARIKAT : 200601015319 (735071-V)]

6. **PLUSBURY DEVELOPMENT SDN BHD**
[NO. SYARIKAT : 200401020700 (659204-K)]

..... **DEFENDAN-
DEFENDAN**

GROUND OF JUDGEMENT
(Enclosure 1: Originating Summons)

INTRODUCTION

1. This Originating Summons was filed by the Plaintiffs, occupiers of part of the subject-land fronting Sungai Selangor, seeking various reliefs arising from river encroachment, conduct of the previous proprietors, and other related matters.

2. Two earlier applications under O.18 r.19, one by each of the 5th and 6th Defendants, have been dismissed by this Court, and the appeals arising therefrom have culminated in the grounds of judgments reported in [2021] MLJU 2100; [2021] 1 LNS 1805 and in [2021] MLJU 2156 respectively.

3. In respect of the Plaintiff's Originating Summons in Enclosure 1, on 13 December 2021 this Court ordered that a re-survey of river encroachment and river boundary be carried out by the Director of Survey and Mapping, that the relevant authorities shall cooperate

and facilitate such re-survey, that such re-survey results be provided to all the parties herein, that all the parties be given opportunity to comment or verify the said re-survey and that after the re-survey results have been completed, a *viva voce* trial shall be conducted on the remaining factual issues in dispute which ought to be heard and disposed of by way of *viva voce* trial.

4. Dissatisfied with the said decision, the 5th and 6th Defendants have vide two separate notices appealed to the Court of Appeal.

BACKGROUND AND FACTS

5. Sungai Selangor, the river from which the State of Selangor derives her name, has been in existence since time immemorial.
6. Along part of the river bank of Sungai Selangor at the location known as Bagan Sungai Yu is a fishing village with many houses and shops. This fishing village is located at the river bank of Sungai Selangor very near the river mouth where Sungai Selangor meets the Straits of Malacca.
7. Among the residents of the Bagan Sungai Yu village are the Plaintiffs who, according to the Plaintiffs' averments in affidavit, are fishermen and traders of seafoods and fishery products who have been occupying and settling at the river bank and adjacent lands since many years ago [paragraph 8 of the Plaintiff's Affidavit-in-Support, Enclosure 2].

8. Federal Oil Mills Bhd was the previous registered proprietor of several hundred acres of estate land including the land parcel of area 47,931.4 square metres (approximate 12 acres) along the river Sungai Selangor at Bagan Sungai Yu location, with title described as HS(D), 280954 Lot PT 821, Pekan Pasir Penambang, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan.

9. According to the Plaintiffs as averred in paragraph 9 of the Plaintiff's Affidavit-in-Support (Enclosure 2) –
 - (1) all the 18 Plaintiffs herein have been residing and occupying their houses and shops at Bagan Sungai Yu for more than 10 years;
 - (2) there was never any attempt by any previous registered proprietor to evict them;
 - (3) the Plaintiff's buildings and premises there were built with the permission of the previous registered proprietor Federal Oil Mills Bhd;
 - (4) the subsequent registered proprietor Plusbury Development Sdn Bhd (6th Defendant) also gave permission for the Plaintiffs to continue residing and occupying the land;
 - (5) in the Master Plan Kebenaran Merancang approved by Majlis Daerah Kuala Selangor on 30.6.2010, for Plusbury Development Sdn Bhd (6th Defendant) through its developer/agent Goldpage Assets Sdn Bhd, the parts of the

land occupied by the Plaintiffs were confirmed and retained as tourist attraction in the form of traditional fishing village and seafood restaurants and shops and also as parts encroached by river. The Plan for Kebenaran Merancang was attached as Exhibit “**TCL-1**” to the Plaintiff’s Affidavit-in-Support (Enclosure 2).

10. The Plaintiffs aver that since many years ago their settlement and occupation at the relevant parts of the land together with other residents have been supplied with public facilities, amenities and utilities by the various government departments and agencies including:

- (1) public roads;
- (2) drains;
- (3) night market;
- (4) Sekolah Rendah Jenis Kebangsaan Cina Khai Tee;
- (5) permanent wet market and dry market for seafood trading;
- (6) Water Supply from SYABAS (now Air Selangor)
- (7) electricity supply from Tenaga Nasional Bhd;
- (8) telephone lines from Telekom Malaysia; and

(9) other facilities : paragraph 16 of Plaintiff's Affidavit-in-Support

[see paragraphs 10 to 12 of the Plaintiff's Affidavit-in-Support].

11. According to the Plaintiffs, the Government also set up a special committee namely Jawatankuasa Kemajuan dan Keselamatan Kampung (JKKK) Bagan Sungai Yu Baru to administer and care for the wellbeing of the villagers including the Plaintiffs and subsequently established MPKK Bagan Sungai Yu for the same purpose and functions : paragraph 13 of Plaintiff's Affidavit-in-Support (Enclosure 2).
12. The Plaintiffs aver that they never encountered any problem with or hindrance by or allegation of trespass from Federal Oil Mills Bhd and the subsequent registered proprietor Plusbury Development Sdn Bhd : paragraph 14 of Plaintiff's Affidavit-in-Support.
13. It is averred by the Plaintiffs that they paid assessment rates to the local authority Majlis Daerah Kuala Selangor every year and a majority of the village residents including the Plaintiffs were also granted Temporary Occupation Licences ("TOLs") by the Land Office, Pejabat Tanah dan Daerah Kuala Selangor : paragraph 15 of the Plaintiff's Affidavit-in-Support.
14. There was sale of 338 acres of oil palm estate by the Federal Oil Mills Sdn Bhd to Plusbury Development Sdn Bhd in 2005 : Exhibit "**TCL-16**", Plaintiff's Affidavit-in-Support in Enclosure 4, page 48 – 54. Unless otherwise stated to the contrary, all references in this

Grounds of Judgment to the pages of the cause papers relate to the pdf pages of the e-filed cause papers in the CMS2 system.

15. The land search records show that the 6th Defendant Plusbury Development Sdn Bhd became the registered proprietor of Lot PT 821 on 30.12.2012 [Exhibit “**TCL-11**” to Plaintiff’s Affidavit-in-Support, Enclosure 2]. The Plaintiffs have alleged that in the course of the 6th Defendant Plusbury’s negotiations and discussions in 2005 with Federal Oil Mills Sdn Bhd for the sale and purchase of lands including the areas occupied by the Plaintiff, the 6th Defendant Plusbury had asked Federal Oil Mills Sdn Bhd to exclude 25 acres at the river bank and/or beside the river from the computation of the purchase price due to river encroachment [see paragraphs 59 to 61 of Plaintiff’s Affidavit-in-Support, Enclosure 2].

16. In support of their averments that the lands or significant parts of the lands occupied by the Plaintiffs have been encroached by the river Sungai Selangor, the Plaintiffs have attached the following photographic evidence to the Plaintiff’s Affidavit-in-Support:
 - (1) satellite images of the relevant part of the river, river banks, village houses including the Plaintiff’s house [Enclosure 3 pdf page 27 -31 Exhibits “**TCL-13**” and “**TCL-14**” to Plaintiff’s Affidavit-in-Support];

 - (2) photographs in Exhibit “TCL-20”, Enclosure 3 pdf pages 84 to 90;

- (3) photographs in Exhibit "TCL-23" in Enclosure 3 pdf pages 106-108;
- (4) photographs in Exhibit "TCL-28" in Enclosure 3 pdf pages 136-140;
- (5) photographs in Exhibit "TCL-34" in Enclosure 3 pdf pages 169-170 (river water);
- (6) photographs in Exhibit "TCL-38" in Enclosure 3 pdf pages 189, 199-201 (river water);
- (7) photographs in Exhibit "TCL-42" in Enclosure 4 pdf pages 2-6 (boats and river water);
- (8) photographs in Exhibit "TCL-46" in Enclosure 4 pdf pages 25-29 (river water);
- (9) photographs in Exhibit "TCL-52" in Enclosure 4 pdf pages 66-68 (river water);
- (10) photographs in Exhibit "TCL-57" in Enclosure 4 pdf pages 89-92 (river water);
- (11) photographs in Exhibit "TCL-64" in Enclosure 4 pdf pages 119-121 (river water);
- (12) photographs in Exhibit "TCL-73" in Enclosure 4 pdf pages 192-203 (house on water).

17. Plusbury Development Sdn Bhd (6th Defendant) charged the lands including Lot PT 821 to Bank Kerjasama Rakyat Malaysia Berhad.
18. After Plusbury Development Sdn Bhd (6th Defendant) defaulted in servicing or repaying the loan, Bank Rakyat in 2019 sued the 6th Defendant and obtained an order of sale by public auction.
19. On 7 January 2020 bought Lot PT 821 at the public auction at the reserved price of RM9,000,000.00. Exhibit "TCL-69" to Plaintiff's Affidavit-in-Support, Enclosure 4 pdf page 139-145.
20. The terms of the auction sale included :

"6. PENAWAR ADALAH BERTANGGUNGJAWAB UNTUK MENGENALPASTI BUTIR-BUTIR HAK TANAH, DAN MEMASTIKAN SEGALA TANGGUNGAN SERTA BEBANAN HARTANAH ADALAH TEPAT"

"23. Hartanah yang berjaya dilelong adalah dipercayai dan akan dianggap sebagai diperihalkan dengan betul dan dijual tertakluk kepada semua Ismen (easement), kaveat, tenansi, tanggungan dan hak (jika ada) yang wujud di atas atau terhadapnya yang timbul untuk mentakrif ia masing-masing dan tiada kesilapan kenyataan yang salah atau deskripsi yang salah akan membatalkan penjualan dan tiada bayaran gantirugi yang akan dibuat.

The Proclamation of Public Auction, “LELONGAN AWAM”, contained this note:

“NOTA : Bakal-bakal pembeli adalah dinasihatkan agar membuat carian Hakmilik secara rasmi di Pejabat Tanah dan memeriksa semua tanggungan, bebanan serta mengenal pasti dengan tepat hartanah tersebut sebelum jualan lelongan dijalankan”

The English version of “PUBLIC AUCTION” contained this note :

“Note : Prospective bidders are advised to conduct an official Title search at the relevant Land Office and Inspect the subject property prior to the auction sale”

“LOCATION AND DESCRIPTION OF PROPERTY

The Subject property comprises vacant commercial land and bearing postal address of Lot PT No. 821, Pekan Pasir Penambang, 45000 Kuala Selangor, Selangor Darul Ehsan“

21. After having bought Lot PT 821 at the public auction and having settled the bid price, the 5th Defendant (Gabungan Melur Sdn Bhd) through its solicitors Messrs Nurliny, Pannir Mannar & Co. by letters dated 15.7.2020 demanded in writing that the Plaintiffs vacate their premises and leave the land Lot PT 821 [Exhibit “TCL-2” to Plaintiff’s Affidavit-in-Support, Enclosure 2, pages 84-106].
22. In September 2020, the 5th Defendant (Gabungan Melur Sdn Bhd) commenced a number of suits by way of Originating Summons for

summary possession of Lot PT 821: Exhibit “TCL-3” to Plaintiff’s Affidavit-in-Support, Enclosure 2 pages 108-169.

23. Acting on behalf of the Plaintiffs, Messrs Mohaji Hazury & Ismail by letter dated 20.10.2020 requested the Kuala Selangor Land Office and the District Officer to carry out a re-survey and rectification pursuant to section 382A of National Land Code on the ground that as a result of river encroachment since years ago the Plaintiffs’ houses were situated on the bed of the river [Exhibit “TCL-6” to Plaintiff’s Affidavit-in-Support, Enclosure 2 pages 180-193].
24. By letter dated 23.10.2020, the Plaintiff’s solicitors also wrote to the Menteri Besar’s office regarding the matter and re-survey and rectification pursuant to section 49 and section 382A of the National Land Code : see Exhibit “TCL-7” to Plaintiff’s Affidavit-in-Support, Enclosure 2 pages 196-317.
25. The Menteri Besar’s Office responded by a letter dated 25.11.2020 addressed to the District Officer/Land Office, forwarding the Plaintiff’s solicitors’ letter dated 26.10.2020 for the District Officer/Land Office to study and deal with it further based on the procedure and steps in force (*“untuk penelitian pihak tuan/puan selanjutnya berdasarkan prosedur dan tatacara yang berkuat kuasa.”*). The Menteri Besar’s Office also asked for a copy of the District Officer/Land Office’s reply or feedback to be extended to the Menteri Besar’s Office [see Exhibit “TCL-8” to Plaintiff’s Affidavit-in-Support, Enclosure 3, pages 2 - 3.

26. Follow-up reminder and further explanations were sent by the Plaintiffs' solicitors to the Menteri Besar's Office via letter dated 28.12.2020 : Exhibit "TCL-9" to Plaintiff's Affidavit-in-Support, Enclosure 3, page 5 - 12.
27. By letter dated 14.01.2021, the Menteri Besar's Office stated that as the disputes are pending before the Court, the State Government faced difficulty in taking the steps applied for by the Plaintiffs and would let the parties resolve their disputes in the Court first [see Exhibit "TCL-10" to Plaintiff's Affidavit-in-Support, Enclosure 3 page 14-16].
28. On 28.4.2021, the Plaintiffs filed this Originating Summons (Enclosure 1) praying for the following orders and/or reliefs:
- (a) *Satu Perintah deklarasi mengesahkan bahawa Kawasan tanah yang diduduki oleh Plaintiff-Plaintif merupakan tanah kautan sungai menurut maksud Seksyen 49 dan Seksyen 382A Kanun Tanah Negara 1965 dan justeru itu kawasan tanah yang diduduki Plaintiff-Plaintif tersebut bukanlah terjumlah kepada Hartanah bawah hakmilik HSD 280954 PT 821 Pekan Pasir Penambang Daerah Kuala Selangor Negeri Selangor (selepas ini dikenali sebagai 'Hartanah tersebut') tetapi Tanah Kautan Sungai yang menjadi Tanah Kerajaan Negeri iaitu Defendan ke-2 dan ke-4;*
- (b) *Satu perintah terhadap Defendan Pertama hingga Defendan ke-4 untuk melaksanakan pengukuran semula semua tanah kautan sungai menurut maksud Seksyen 49 dan 382A Kanun*

Tanah Negara 1965 dan mengukur semula keluasan sebenar Hartanah HSD 280954 PT 821 tersebut [milik Defendan Ke-5] supaya ukuran terkini, baru dan tepat yang boleh menggambarkan keadaan sebenar dan terkini bentuk muka bumi kawasan perkampungan nelayan di Bagan Sungai Yu tersebut khususnya dapat membezakan tanah kautan sungai di sepanjang tepi Sungai Bagan Yu tersebut yang menjadi tanah Kerajaan Negeri Selangor menurut Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan tanah HSD 280954 PT 821 tersebut;

- (c) Satu perintah supaya Defendan Pertama dan Defendan ke-2 mencatatkan, merekodkan dan mengeluarkan satu memorial terhadap geran Hartanah HSD 280954 PT 821 Pekan Pasir Penambang tersebut berdasarkan pengukuran tepat, terkini dan terbaru oleh Defendan Ke-2 dan Ke-3 seperti di Perenggan (b) di atas untuk mengesahkan setakat mana tanah kautan sungai sehingga terdapat perubahan terhadap ukuran keluasan Hartanah tersebut akibat kemaraan dan kautan sungai dan mengambil tindakan sewajarnya berdasarkan Seksyen 382A Kanun Tanah Negara 1965;*

- (d) Satu perintah supaya Defendan Pertama dan Defendan ke-2 mencatatkan, merekodkan dan mengeluarkan satu memorial terhadap geran Hartanah HSD 280954 PT 821 Pekan Pasir Penambang tersebut khususnya bagi menentukan samada bahagian Tanah yang Diduduki oleh Plaintiff-Plaintif tersebut dan / atau bahagian tanah kautan sungai di sepanjang tepi sungai Bagan Sungai Yu tersebut telah menjadi tanah*

Kerajaan Negeri Selangor menurut Seksyen 49 dan 382A Kanun Tanah Negara 1965;

- (e) Satu perintah supaya Defendan Pertama dan Defendan ke-2 mencatatkan, merekodkan dan mengeluarkan satu memorial terhadap geran Hartanah HSD 280954 PT 821 Pekan Pasir Penambang tersebut menurut Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan supaya memorial tersebut diletakkan ke dalam geran terkini dan / atau terbaru Hartanah tersebut dan satu geran serta pelan terkini Hartanah tersebut hendaklah dikeluarkan dan didaftarkan oleh Defendan Pertama berdasarkan ukuran yang dirujuk di Perenggan (b);*
- (f) Satu perintah supaya Defendan Pertama dan Defendan ke-2 mencatatkan, merekodkan dan mengeluarkan satu memorial terhadap geran Hartanah HSD 280954 PT 821 Pekan Pasir Penambang tersebut menurut seksyen 49 dan 382A Kanun Tanah Negara 1965 dan supaya memorial tersebut diletakkan ke dalam geran terkini dan / atau terbaru Hartanah tersebut dan satu geran serta pelan terkini Hartanah tersebut juga merangkumi jalan raya di hadapan premis / rumah setiap Plaintiff-Plaintif yang dibina Kerajaan Negeri Selangor melalui Jabatan Parit dan Saliran / JKR yang menghubungkan perkampungan Bagan Sungai Yu tersebut;*
- (g) Deklarasi bahawa Notis Pengusiran bertarikh 15.7.2020 kepada kesemua Plaintiff secara berasingan mengikut premis-premis yang dikeluarkan oleh Defendan Ke-5 melalui pos*

berdaftar untuk mengusir kesemua Plaintiff daripada tanah yang diduduki oleh Plaintiff-Plaintif adalah batal dan tidak sah;

- (h) Deklarasi bahawa Defendan ke-6 telah mengiktiraf hak Plaintiff-Plaintif dan membenarkan mereka membina premis kediaman / perniagaan di sepanjang Bagan Sungai Yu seperti disahkan dalam Kebenaran Merancang yang diluluskan oleh Majlis Daerah Kuala Selangor pada 30.6.2010 kepada Defendan ke-6 melalui Goldpage Assets Sdn Bhd bahawa 'Blok Perkampungan Nelayan Sedia Ada dikekalkan sebagai tarikan pelancongan dan Bangunan Restoran Sedia ada akan dikekalkan dan dibaikpulih;*
- (i) Perintah supaya Defendan ke-5 dihalang daripada menghalau atau mengambil apa-apa langkah mengusir Plaintiff-Plaintif serta merobohkan bangunan milik Plaintiff-Plaintif atau membuat kacau ganggu termasuk semua perkara-perkara yang boleh terjumlah kepada menghalang Plaintiff-Plaintif daripada menikmati hak terhadap hartanah / lot tanah atas sungai dan kautan sungai tersebut;*
- (j) Kos guaman Plaintiff-Plaintif adalah ditanggung oleh Defendan-Defendan; dan*
- (k) Mana-mana perintah lain atau arahan-arahan yang dianggap wajar dan suaimanfaat untuk diberikan oleh Mahkamah Yang Mulia ini.*

29. The cause papers filed by and exchanged between the parties in connection with the Originating Summons include:

- (1) Plaintiff's Originating Summons (Enclosure 1);
- (2) Affidavit in Support of the Plaintiffs affirmed on 28.2.2021 (Enclosures 2 , 3 and 4);
- (3) 5th Defendant's Affidavit-in-Reply affirmed by Patrick Oh Shu Lin on 21.7.2021 (Enclosure ---);
- (4) 5th Defendant's Affidavit-in-Reply (2) affirmed by Patrick Oh Shu Lin on 21.7.2021 (Enclosure 20);
- (5) Affidavit-in-Reply by the Plaintiffs affirmed on 9.8.2021 (Enclosure 28);
- (6) Affidavit-in-Reply by the Plaintiffs affirmed on 21.6.2021 (Enclosure 11);
- (7) Affidavit-in-Reply of the 1st and 4th Defendants affirmed on 14.9.2021 (Enclosure 47);
- (8) Affidavit-in-Reply by the Plaintiffs affirmed on 12.7.2021 (Enclosure 14);
- (9) Affidavit-in-Reply by the Plaintiffs affirmed on 27.9.2021 (Enclosure 54);

- (10) Affidavit-in-Reply by the 3rd Defendant affirmed by Rozlan bin Omar on 13.9.2021 (Enclosure 45);
- (11) Affidavit-in-Reply by the Plaintiffs affirmed on 27.9.2021 (Enclosure 55);
- (12) Affidavit-in-Reply by the 6th Defendant affirmed by Tang Fui Koh on 31.5.2021 (Enclosure 8);
- (13) Affidavit-in-Reply (2) by the 6th Defendant affirmed by Tang Fui Koh on 29.7.2021 (Enclosure 23).

PARTIES' RESPECTIVE ARGUMENTS

30. The Plaintiffs' main arguments in this suit are:

- (1) the argument that the parts of the river bed land occupied by the Plaintiffs had been encroached by river within the meaning of sections 49 and 382A of the National Land Code and therefore had formed part of the state land and ceased to be part of Lot PT 821;
- (2) the argument the 1st to 4th Defendants are under a statutory duty to re-survey Lot PT 821 in accordance with sections 49 and 382A of National Land Code so that the updated, new and precise survey record depicting the current and true condition of land including the river encroachment land and Lot PT 821 and to make ancillary or consequential amendments or alterations to register of titles;

- (3) the argument that the 5th Defendant's Notice of Eviction dated 15.7.2020 issued to the Plaintiffs are null and invalid;
- (4) the argument that the 6th Defendant (Plusbury Development Sdn Bhd) had recognised the Plaintiffs' rights and allowed the Plaintiffs to build residential/commercial premises along Bagan Sungai Yu as was confirmed in the Planning Approval (Kebenaran Merancang) approved by Majlis Daerah Kuala Lumpur Selangor on 30.6.2010 issued to the 6th Defendant c/o Goldpage Assets Sdn Bhd that the existing fishing village be retained as tourist attraction and the existing restaurants shall be upgraded, i.e. "*Blok Perkampungan Nelayan Sedia Ada dikekalkan sebagai tarikan pelancongan dan Bangunan Restoran sedia ada akan dikekalkan dan dibaikpulih.*"
- (5) the argument that in the course of the 6th Defendant Plusbury's negotiations and discussions in 2005 with Federal Oil Mills Sdn Bhd for the sale and purchase of lands including the areas occupied by the Plaintiff, the 6th Defendant Plusbury had asked Federal Oil Mills Sdn Bhd to exclude 25 acres at the river bank and/or beside the river from the computation of the purchase price due to river encroachment; and
- (6) the argument that the 5th Defendant has no right to demolish the Plaintiffs' premises or evict the Plaintiffs from the premises or to cause any interference with the Plaintiffs' enjoyment of rights at the river bed and river encroachment areas.

[see prayers (a), (b), (f), (g), (h) and (i) of Originating Summons, Enclosure 1; Plaintiffs' Written Submission in Enclosure 31].

31. The Land Office (1st Defendant) and the State Government (4th Defendant) raised these main arguments in their submissions in Enclosure 79:

- (1) Survey of land title is to be carried out at the request of the proprietor or an applicant;
- (2) A survey was carried out in 2019 at the application of Jurukur Murni, Goldpage Assets Sdn Bhd's surveyor, for the issuance of replacement titles;
- (3) The Menteri Besar's letter stated that the land dispute should be resolved by the Court before the State Government takes further action of any re-survey;
- (4) Even after re-survey, if the parties still dispute the boundary of land, the parties can appeal under the National Land Code;
- (5) The 1st and 4th Defendants merely perform their administrative functions under the National Land Code and are not privy to the proprietary disputes between the Plaintiffs and the 5th Defendant;
- (6) The Court's decision as to the river encroachment should be made first before the 1st Defendant could be satisfied as to

river encroachment and ask the 4th Defendant to make a re-survey;

(7) The Plaintiff could have appointed a private land surveyor to carry out the survey another time instead of asking the 4th Defendant to carry out a re-survey;

(8) The Plaintiffs should establish their proprietary rights first in the other 11 related cases first before asking for re-survey and should not have brought this suit against the Defendants herein.

32. The 3rd Defendant (Director of Survey and Mapping) in his submission-in-reply (Enclosure 87) takes a neutral stand by stating that he is prepared to carry out a re-survey if ordered by this Court or if requested by the Land Administrator and that his costs of re-survey should be borne by the other parties. In his submission in Enclosure 70, the 3rd Defendant confirmed that he has done the final survey of the title boundary for Lot 821 for purpose of issuance a final title. However, it is also evident that the 3rd Defendant has still not done a re-survey to ascertain or demarcate the extent and boundary of river encroachment and the high-water mark during the spring tide for PT 821 because there was no request by the Land Administrator to that effect.

33. The main arguments of the 5th Defendant (Gabungan Melur Sdn Bhd) in its submissions in Enclosure 73 are as follows:

- (1) the argument that the Plaintiff are not more than squatters simpliciter who have no rights whatsoever in Lot PT 821;
- (2) the argument that the Plaintiffs are not occupying the part of the said land under any licence or consent of the 5th Defendant or tenant or licensee holding over;
- (3) the argument that the Plaintiffs make bare assertions without any shred of evidence that they had obtained permission or consent of the previous landowners, namely Federal Oil Mill Bhd and Plusbury Development Sdn Bhd, to occupy the land;
- (4) the argument that the Planning Permission dated 30.6.2010 did not in any way demonstrate any consent allegedly given for the Plaintiffs to occupy part of the said land, that the Planning is of no effect whatsoever against the 5th Defendant, the registered proprietor now; that the Planning Permission has since lapsed; and that the fishing village stated in the Planning Permission did not include the areas occupied by the Plaintiffs;
- (5) the argument that no title could be acquired by occupation or adverse possession;
- (6) the argument that the Land Administrator has not made a memorial on the title regarding river encroachment, the certified plan for the issuance of Final Title issued on 3.7.2019 has been prepared; and

(7) the argument that the licensed surveyor's plan shows that the Plaintiffs' buildings encroached partly onto Lot PT 821..

34. In its submissions (Enclosure 72) the 6th Defendant (Plusbury Development Sdn Bhd) has raised the following main arguments in opposition of the Plaintiff's Originating Summons:

(1) the argument that 6th Defendant Plusbury had never rented out or granted any permission to the Plaintiffs or any other party authorizing the construction on or occupation of the Land;

(2) the argument that the Kebenaran Merancang dated 30.6.2010 that it was addressed to Konsultant Jururancang Bandar Sdn Bhd and not Plusbury Development Sdn Bhd, the Planning Permission was further copied to 13 parties as can be seen from the list of recipients of the Kebenaran Merancang and Plusbury Development Sdn Bhd was not one of them and there is nothing to suggest it was obtained for Plusbury Development Sdn Bhd or by Plusbury Development Sdn Bhd;

(3) the argument that the said "Kebenaran Merancang" does not refer to any of the 18 Plaintiffs or in any way confer them the rights to occupy the said Land; and

(4) the argument that the Plaintiffs are merely illegal squatters at Lot PT 821;

On the face of it, the 6th Defendant's main arguments (1) to (3) in its submissions in respect of the Originating Summons appears to be contradictory to its own argument in the O.18 r.19 application that the 6th Defendant Plusbury no longer had any rights to the land and had no knowledge regarding the Plaintiffs' allegations on permission or consent [see the 6th Defendant's grounds of application in Enclosure 17 and paragraphs 7.1 to 7.6 the 6th Defendant's Affidavit-in-Support on Enclosure 17 (Enclosure 18)].

35. The specific and/or detailed aspects of the parties' submissions are dealt with at the following parts of the judgment.

RELEVANT SECTIONS OF THE NATIONAL LAND CODE

36. The provisions of the National Land Code which have relevance to the 1st argument and/or group of issues are reproduced below:

“Interpretation

5. 5. In this Act, in all documents of title to alienated land, and in all leases, licences, permits, notices, agreements and other documents relating to land granted, issued or entered into by or on behalf of the State Authority (including documents existing at the commencement of this Act), unless the context otherwise requires—

“river” means any river, stream, creek or other natural watercourse, and any tributary, distributary or artificial deviation thereof;

“shoreline” means the high-water mark of ordinary spring tides;

Powers of disposal of State Authority, and rights in reversion, etc.

41. Without prejudice to its powers and rights under any other written law for the time being in force, the State Authority shall have—

(a) all the powers of disposal conferred by section 42 with respect to—

(i) property vested in it under section 40; (ii) reserved land; and (iii) mining land, which powers shall be exercised in such manner and to such extent as is authorized by this Act, and not otherwise; and

(b) all the rights in reversion and other similar rights conferred on it by section 46.

Reversion, etc., to the State Authority

46. (1) Without prejudice to the provisions of any other written law for the time being in force, alienated land shall revert to and vest in the State Authority in the following circumstances:

(a) ...

(b)...

(c)...

(d)...

and any part of alienated land affected by encroachment by the sea or any river shall revert to and vest in the State Authority in accordance with section 49.

Buildings to vest in State Authority on reversion, etc.

47. (1) On the reversion of any alienated land to the State Authority, or the determination of any lease of reserved land, or of any licence or permit issued by the State Authority with respect to any land

under this Act or any previous land law, there shall, subject to subsection (3), vest in the State Authority all buildings on the land (by whomsoever erected) other than any of temporary construction and capable of removal.

(2) Subject to subsection (3), no compensation shall be payable by the State Authority in respect of any building vesting in it pursuant to this section.

(3) Subsections (1) and (2) shall have effect subject to any provision to the contrary in the document of title to the land in question or, as the case may be, the lease, licence or permit in question.

Effect of advance or retreat of sea, etc.

49. Where the shoreline or the bed of any river advance so as to encroach on any alienated land, the area affected by the encroachment shall thereupon cease to form part of that land, and shall become State land; but the boundaries of alienated land shall not (except in the circumstances mentioned in paragraph (ii) of the proviso to subsection 353(2)) be affected by any retreat of the shoreline or of the bed of any river.

Actions in relation to documents of title where alienated land becomes State land under section 49

382A. (1) The Land Administrator shall upon being satisfied that any alienated land or part thereof has become State land under section 49, make or cause to be made a memorial to that effect in the register document of title to the land.

(2) The Registrar shall after making a memorial under subsection (1)—

(a) notify the proprietor thereof of the making of such memorial;

(b) call for the production of the issue document of title in accordance with section 15; and

(c) make the like memorial on the issue document of title or, in the case where the whole land has become State land, destroy the subsisting issue document of title.

(3) Where the whole land has become State land upon the making of any memorial under subsection (1), the subsisting register document of title and any subsisting issue document of title which has been destroyed pursuant to paragraph (2)(c) shall be deemed to have been cancelled and no entry shall thereafter be made therein.

Part Twenty-Four—RESURVEY OF LAND HAVING NATURAL BOUNDARIES

Resurvey of land alienated before commencement by reference to natural feature boundaries

353. *(1) Where any land alienated before the commencement of this Act is expressed in the document of title thereto to extend to a boundary or boundaries consisting of any natural feature, the Director of Survey and Mapping shall, at the request of the State Director, cause the boundary or boundaries in question to be determined by right lines.*

(2) Where the natural feature referred to in subsection (1) consists of the foreshore, the coastline or the sea, a river or riverbank, or any other feature the line of which is liable to alter from time to time, then, for the purposes of this section the boundary shall be taken to follow any survey traverse made for the purpose of determining the line of that feature at the time the land was alienated: Provided that—

(i) the traverse shall be disregarded to the extent, if any, necessary to take account of any advance of the shoreline, or of the bed of any river;

(ii) unless the proprietor of the land would thereby become entitled to an area substantially greater than that specified in his document of title, the traverse shall also be disregarded to the extent, if any, necessary to include within the boundaries of the land any revetment, sea wall, river wall or other structure lawfully erected by the proprietor or any predecessor in title.

(3) Where any boundary has been determined in pursuance of subsection (1), the Director of Survey and Mapping—

(a) shall cause such action to be taken as may be necessary to secure that it is demarcated on the surface of the land by boundary marks, or is capable of being ascertained therefrom;

(b) shall cause the area of the land to be recalculated;

(c) may, if he thinks fit, assign a new lot number to the land; and

(d) shall cause a certified plan to be prepared for his approval showing the boundaries of the land (including the boundary or boundaries so determined), the position of the boundary marks and the area and lot number.

(4) When the plan prepared under paragraph (3)(d) has been approved by the Director of Survey and Mapping, it shall for the purposes of subsection 396(2) be deemed to be the plan approved under paragraph (1)(e) of that section.

Procedure (including appeal) after resurvey, and provision as to costs

354. (1) Where any boundary has been determined in pursuance of subsection 353(1), the State Director shall cause notice of the fact,

together with a plan showing the effect of the determination, to be served on the proprietor of the land, and on any person having a registered interest therein; and any such person may, within the period of six months beginning with the date of the notice, appeal to the State Director against the determination on the ground that it is incorrect or inequitable.

(2) Any appeal under this section shall be in writing, specifying the grounds on which it is alleged that the determination is incorrect or inequitable; and the State Director, after considering the grounds so specified and holding such enquiry as he may think fit, shall either dismiss the appeal or give such direction for the re-determination of the boundary, and with respect to matters consequential thereon, as he may consider necessary or just.

(3) At the end of the period referred to in subsection (1) or, where any appeal is made during that period, so soon as it has been disposed of and any re-determination of the boundary effected, the State Director shall notify the Registrar or, in the case of land held under Land Office title, the Land Administrator; and the Registrar or Land Administrator, on being so notified, shall issue title in continuation to the land (in conformity with any determination or re-determination of boundaries under this Part) as if he were issuing title in continuation to land as a whole.

(4) The costs of determining any boundary under section 353 or this section shall be defrayed by the State Authority; and no fees shall be charged by the State Authority in connection with any appeal under this section or any action taken thereunder by the Registrar.

General authority of the Court

417. (1) The Court or a Judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.”

37. From the abovementioned provisions of the National Land Code, the legal consequences of river encroachment and re-surveys are as follows:

- (1) any part of alternated land affected by encroachment by the sea or any river shall revert to and vest in the State Authority in accordance with section 49 of National Land Code : section 46(1) of National Land Code;
- (2) where the shoreline or the bed of any river advances so as to encroach on any alienated land, the area affected by the encroachment **shall thereupon** cease to form part of that land, and shall become State land : section 49 of National Land Code;
- (3) re-survey of land having natural boundary is provided for in section 353 of National Land Code; section 353 of National Land Code provides for re-survey of the natural boundary of river so as to determine the right lines and thereafter to have them reflected or recorded in the register of documents of title of the affected lands;

- (4) where alienated land or path thereof has become State land due to encroachment by sea or river, the Land Administrator's role is to make or cause to be made a memorial to that effect in the register document of title to the land: section 382(a) of National Land Code; and
- (5) The Court may by order direct the Register or any Land Administrator to do all things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to the land : section 417(1) of National Land Code.

QUESTIONS OF RIVER ENCROACHMENT AND ITS EXTENT

38. The questions whether an alienated land or part thereof has been encroached by river, and if so, the boundary or extent of encroachment by river, are questions of fact in each particular case.
39. In our present case, the Plaintiff have produced the following documents and matters in support of their contention that Lot PT 821 or part thereof occupied by the Plaintiffs has been encroached by the river Sungai Selangor –
 - (1) satellite images of the relevant part of the river, river banks, village houses including the Plaintiff's house [Enclosure 3 pdf page 27 -31 Exhibits "TCL-13 and TCL-14" to Plaintiff's Affidavit-in-Support];

- (2) photographs in Exhibit "TCL-20", Enclosure 3 pdf pages 84 to 90;
- (3) photographs in Exhibit "TCL-23" in Enclosure 3 pdf pages 106-108 [pdf page 108 shows a house / shop built on stilts in muddy riverside ground, and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area];
- (4) photographs in Exhibit "TCL-28" in Enclosure 3 pdf pages 136-140 [pdf pages 138 to 140 show a seafood restaurant built on stilts in muddy riverside ground, and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area];
- (5) photographs in Exhibit "TCL-34" in Enclosure 3 pdf pages 169-170 [pdf page 170 shows a structure built on stilts in riverside ground which appears to be submerged in water , and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area];
- (6) photographs in Exhibit "TCL-38" in Enclosure 3 pdf pages 189, 199 - 201 170 [pdf page 200 shows house / shop built on stilts in riverside ground which appears to be submerged in water, and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area];
- (7) photographs in Exhibit "TCL-42" in Enclosure 4 pdf pages 2 - 6 [pdf page 3 shows houses and/or shops built on stilts in

muddy riverside ground and also boats adjacent to the houses and/or shops, and it is triable issue of fact whether this is part of the river bed or river encroachment area; pdf page 6 shows a house / shop built on stilts in riverside ground which appears to be submerged in water , and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area];;

- (8) photographs in Exhibit “TCL-46” in Enclosure 4 pdf pages 25 - 29 (river water);
- (9) photographs in Exhibit “TCL-52” in Enclosure 4 pdf pages 66-68 [pdf pages 67 and 68 show a seafood restaurant built on stilts in muddy shore of the river, and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area];
- (10) photographs in Exhibit “TCL-57” in Enclosure 4 pdf pages 89-92 [pdf pages 91 and 92 show a seafood restaurant built on stilts in what appears to be muddy riverside ground or partly above river water, and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area];
- (11) photographs in Exhibit “TCL-64” in Enclosure 4 pdf pages 119 – 121 [pdf page 120 shows a seafood restaurant built on stilts in muddy riverside ground, and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area];

- (12) photographs in Exhibit “TCL-73” in Enclosure 4 pdf pages 192 - 203 [pdf pages 193 to 203 show many houses and/or shops built on stilts in riverside ground submerged in river water and also boats adjacent to the houses and/or shops, and it is a seriously arguable issue of fact whether this is part of the river bed or river encroachment area;);
- (13) alleged recognition and/or confirmation by the previous owners Federal Oil Mills Bhd and the 6th Defendant (Plusbury Development Sdn Bhd) that a sizeable part of the lands had been encroached by river : paragraphs 9, 59 - 63 of the Plaintiffs’ Affidavit-in-Support (Enclosure 2) and Exhibits “TCL-1” and “TCL-16” thereto including the exchanges of letters and sale and purchase negotiations between Federal Oil Mills Bhd and the 6th Defendant (Plusbury Development Sdn Bhd);
- (14) alleged admission and/or confirmation by Goldpage Assets Sdn Bhd on behalf of the 6th Defendant (Plusbury Development Sdn Bhd) vide the Kebenaran Merancang that the land occupied by the riverfront occupiers (including the Plaintiffs) had been encroachment by river: paragraphs 9, 67 to 75 of the Plaintiffs’ Affidavit-in-Support (Enclosure 2) and Exhibit “TCL-1” thereto;
- (15) Majlis Daerah Kuala Selangor (the 1st Defendant), by giving its approval for Kebenaran Merancang in favour of Goldpage Assets Sdn Bhd with confirmation of retention of the village

houses including the Plaintiffs' houses and restaurants and shops as traditional fishing village, had allegedly recognised officially the river encroachment and also the Majlis Daerah's collection of assessment rates from the Plaintiffs : paragraph 15 of the Plaintiffs' Affidavit-in-Support (Enclosure 2); paragraph 79 of the Plaintiffs' Affidavit-in-Reply (Enclosure 11);

(16) PTD's issuance of TOLs to Plaintiffs which, according to the Plaintiffs' contention, would constitute recognition that the lands comprised in the TOLs had reverted to and vested in the State Authority: paragraph 183 of the Plaintiffs' Affidavit-in-Support (Enclosure 2) and Exhibit "TCL-68" thereto, paragraphs 48 and 49 of the Plaintiffs' Affidavit-in-Reply and Exhibit "TCL-4" thereto (Enclosure 11); and

(17) the 5th Defendant's application to LUAS for approval to build a jetty at the riverside land is argued by the Plaintiffs as the 5th Defendant's recognition that the riverside land had reverted to the State Authority: paragraphs 81 to 85 the Plaintiffs' Affidavit-in-Support (Enclosure 2) and Exhibit "TCL-21" thereto.

40. In our present case, the 5th Defendant Gabungan Melor has produced a licensed land surveyor's plan which shows that parts of Lot PT 821 have been encroached by river and that the Plaintiffs' shops, restaurants and buildings are partly on the river and partly on Lot PT 821: see Exhibits "P-5" and "P-6" to the 5th Defendant's Affidavit-in-Support (Enclosure 18). The Plaintiffs have denied the

accuracy of the boundary line of river erosion and/or river encroachment drawn by the 5th Defendant's licensed surveyor. In the affidavits and exhibits filed by the 5th Defendant, there is no specific evidence to show the basis and criteria which were used by the private licensed surveyor for his marking of the line of river encroachment as shown in his survey plan.

41. From the affidavits filed by and exchanged between the parties in this Originating Summons, this Court has found the following facts to be either undisputed or have been established on a balance of probabilities.

- (1) The areas occupied by the Plaintiffs' shops, restaurants and buildings have formed part of a fishing village along the river bed and/or river bank of Sungai Selangor for decades.
- (2) Over the years, this fishing village including the shops, restaurants and buildings have become a tourist attraction.
- (3) The areas occupied by the Plaintiffs' shops, restaurants and buildings are very near the river estuary of Sungai Selangor where Sungai Selangor meets the sea, namely the Straits of Melaka.
- (4) At least part of Lot PT 821 has formed part of a river or has been encroached by Sungai Selangor river.
- (5) The extent of the encroachment by river and the boundary of the river encroachment line has still not been surveyed or

ascertained yet in spite of the lapse of years of erosion or river encroachment.

- (6) The original registered proprietor of the land of about 12 acres described as HS(D) 280954 Lot PT 821, Pekan Pasir Penambang, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan (“the Subject-Land”) was Federal Oil Mills Berhad.
- (7) The 6th Defendant (Plusbury Development Sdn Bhd) bought the Lot PT 821 from Federal Oil Mills Berhad, and then the 6th Defendant became the registered proprietor.
- (8) By a Power of Attorney and related document(s), the 6th Defendant (Plusbury Development Sdn Bhd) granted development rights and some other rights to Goldpage Assets Sdn Bhd over the Subject Land.
- (9) Goldpage Assets Sdn Bhd submitted an application for planning approval to develop the Subject-Land.
- (10) Majlis Daerah Kuala Selangor approved Goldpage Assets Sdn Bhd’s application for development of the Lot PT 821 and granted the Planning Approval (“Kebenaran Merancang”) with conditions including that the fishing village (including the houses and shops occupied by the Plaintiffs) be retained as traditional fishing village to promote tourism.

- (11) The Lot PT 821 was charged by either 6th Defendant (Plusbury Development Sdn Bhd) and/or Goldpage Assets Sdn Bhd to the lender bank as security for loan facility.
- (12) There was default in the repayment of the bank loan, and the Lot PT 821 was sold by the bank in a public auction.
- (13) In January 2020 the 5th Defendant Gabungan Melur Sdn Bhd bought the Lot PT 821 in public auction of terms stated in the proclamation of sale.
- (14) The terms of the auction sale included:

“6. PENAWAR ADALAH BERTANGGUNGJAWAB UNTUK MENGENALPASTI BUTIR-BUTIR HAK TANAH, DAN MEMASTIKAN SEGALA TANGGUNGAN SERTA BEBANAN HARTANAH ADALAH TEPAT”

“23. Hartanah yang berjaya dilelong adalah dipercayai dan akan dianggap sebagai diperihalkan dengan betul dan dijual tertakluk kepada semua Ismen (easement), kaveat, tenansi, tanggungan dan hak (jika ada) yang wujud di atas atau terhadapnya yang timbul untuk mentakrif ia masing-masing dan tiada kesilapan kenyataan yang salah atau deskripsi yang salah akan membatalkan penjualan dan tiada bayaran gantirugi yang akan dibuat.

The Proclamation of Public Auction, “LELONGAN AWAM”, contained this note:

“NOTA : Bakal-bakal pembeli adalah dinasihatkan agar membuat carian Hakmilik secara rasmi di Pejabat Tanah dan memeriksa semua tanggungan, bebanan serta mengenal pasti dengan tepat hartanah tersebut sebelum jualan lelongan dijalankan”

The English version of “PUBLIC AUCTION” contained this note :

“Note : Prospective bidders are advised to conduct an official Title search at the relevant Land Office and Inspect the subject property prior to the auction sale”

“LOCATION AND DESCRIPTION OF PROPERTY

The Subject property comprises vacant commercial land and bearing postal address of Lot PT No. 821, Pekan Pasir Penambang, 45000 Kuala Selangor, Selangor Darul Ehsan

- (15) The 5th Defendant Gabungan Melur Sdn Bhd has become the registered proprietor of the Lot PT 821 after having paid the bid price.
- (16) After having bought Lot PT 821 at the public auction and having settled the bid price, the 5th Defendant (Gabungan Melur Sdn Bhd) through its solicitors Messrs Nurliny, Pannir Mannar & Co. by letter dated 15.7.2020 demanded in writing that the Plaintiffs vacate their premises and leave the land Lot PT 821; and

(17) The areas occupied by the Plaintiffs' shops, restaurants and buildings have either been encroached by river or at least partly encroached by river. However, the line or boundary of river encroachment is in dispute between the parties and has not been established by official survey of the Director of Survey and Mapping, the statutorily-recognised body for carrying out the re-survey of river encroachment and natural boundary under the National Land Code.

42. In the premises, this Court held on 13 December 2021 as follows regarding the questions of re-survey of river encroachment and/or natural boundary:

- (1) Under the laws, the river or part thereof encroached by the river became State land automatically by operation of law.
- (2) Under the laws the land which forms part of a river or which has been encroached by a river cannot be alienated by the Land Administrator to a private person or company or can continue to be owned by a private legal entity as long as the river encroachment remains.
- (3) For a land which is at or very near the river estuary, the extent and demarcation line of river encroachment is to be considered by taking into consideration the high-water mark of river water at ordinary spring tides.
- (4) Under the laws, the party entrusted with the responsibility for carrying out the official re-survey of land in the event of erosion

by river or river encroachment is the 3rd Defendant, the Director of Survey and Mapping, Selangor.

- (5) However, the procedure under the law is that the State Director of Lands and Mines has to make a request to the 3rd Defendant, the Director of Survey and Mapping, Selangor before the latter conducts the re-survey for demarcation of the extent and boundary line of erosion by river or river encroachment.
- (6) Under the laws the Land Administrator or the Registrar of titles shall or ought to make a memorial to record on the register of title the change in land boundary when the land or part thereof has been encroached by river or has become river bed after the re-survey has been done by the 3rd Defendant, the Director of Survey and Mapping, Selangor.
- (7) Where there is a serious and *bona fide* dispute between the registered proprietor and the occupiers of a land that the land or parts thereof have allegedly been encroached by river and by such alleged river encroachment the occupied parts have reverted to the State Authority and ceased to be part of the registered proprietor's land, such serious and *bona fide* dispute ought to be resolved by the process of re-survey for demarcation of the extent and boundary line of erosion by river or river encroachment.
- (8) The river land, river encroachment and lands adjoining the river including the lands occupied by the Plaintiffs should be

re-surveyed in order to identify and ascertain the boundary of the river and the river encroachment.

(9) In a situation of river encroachment, the State Director of Land and Mines has the duty and function to make a request to the 3rd Defendant, the Director of Survey and Mapping, Selangor so as to start and implement the process of re-survey.

(10) The High Court has the power to order a public officer (including the State Director of Lands and Mines, the Land Administrator, the Registrar of titles, the Director of Survey and Mapping) with statutory duties or functions to perform his duties and functions under the laws and/or to comply with the Court Order.

43. This Court also finds that there are serious and *bona fide* disputes between the registered proprietor and the occupiers of Lot PT 821 that extent and line of river encroachment into Lot PT 821, such serious and *bona fide* disputes ought to be resolved by the process of re-survey for demarcation of the extent and boundary line of erosion by river or river encroachment. In the National Land Code, the expression “river encroachment” is not specifically defined. Section 353(2) of the National Land Code uses the expression “*Where the natural feature ... consists of the foreshore, the coastline or the sea, a river or riverbank, or any other feature the line of which is liable to alter from time to time*”. The definitions of “river” and “shoreline” in the Code state that “*river*” means any river, stream, creek or other natural watercourse, and any tributary, distributary or artificial deviation thereof; and “*shoreline*” means the high-water

mark of ordinary spring tides". The word "shoreline" is not defined to be limited the shoreline fronting the sea; as such, "shoreline" can include the shoreline of land at or very near the estuary of a river which are also inundated by ordinary spring tides. This Court does not accept the 1st and 4th Defendants' argument that the Plaintiffs' proprietary rights must first be established by court decision in the other 11 related cases before a re-survey can be carried out. In the considered view of this Court, the extent and boundary of the river encroachment, river shoreline and the high-water mark during the spring tide at Lot PT 821, the land fronting the Sungai Selangor very near the estuary with the sea, must be ascertained and demarcated first by re-survey by the Director of Survey and Mapping pursuant to the National Land Code as this Court is satisfied that river encroachment and erosion have occurred at Lot PT 821. It is after the re-survey and ascertainment of the river encroachment, river shoreline and high-water mark during spring tide have been completed by the Director of Survey and Mapping Selangor that the extent of ownership and reversion to the State can be identified. If, as contended by the Plaintiffs, the areas occupied by their buildings or parts thereof have reverted to the State by reason of river encroachment or by spring tide water, then under the laws the 5th Defendant would have no ownership of the affected areas and on that basis would have no legal right to serve eviction notices or recover possession from the Plaintiffs or some of them. At this stages of the proceedings, this Court finds that the natural boundary line of Lot PT 821 with the river at or very near the estuary of Selangor River has still not been established in accordance with the criteria and meaning of the National Land Code. The 5th Defendant's private surveyor's survey plan which does not state the basis and

criteria of his marking the alleged boundary line has not satisfied the standard and requirements of the law. The proposition of the 1st and 4th Defendants to require the Plaintiffs' proprietary claims established first in the 11 court cases before the Director of Survey and Mapping's conducting a re-survey according to the basis and criteria laid down by the National Land Code would give an extraneous, unfair and/or unjust advantage to the 5th Defendant of getting the Final Title to Plot 821 first while leaving the Plaintiffs the even greater uphill battle of trying to challenge the Final Title boundary.

44. In making this finding on the existence of serious and *bona fide* disputes as to extent and line of encroachment by river, this Court has perused and considered all of the documents listed in paragraphs 41 and 42 above, of particular attention include photographs of some of the Plaintiffs' houses with river water beneath the house buildings, muddy river bed upon which the house on stilts were built, boats at the side of the houses: see paragraphs in items (5) to (9) of paragraphs 16 and 41 above.

45. As the facts in our present case have sufficiently established a case for re-survey of the river encroachment and natural boundary by the Director of Survey and Mapping pursuant to the provisions of the National Land Code, this Court on 13 December 2021 ordered that such re-survey shall be carried out in the following terms:

(1) *“Satu perintah terhadap Defendan Pertama hingga Defendan Keempat untuk mengambil langkah-langkah yang perlu untuk melaksanakan dan/atau membolehkan pelaksanaan*

pengukuran semula semua tanah kautan sungai menurut maksud Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan mengukur semula keluasan sebenar Hartanah HS(D), 280954 Lot PT 821, Pekan Pasir Penambang, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan supaya ukuran terkini, baru dan tepat yang boleh menggambarkan keadaan sebenar dan terkini bentuk muka bumi kawasan perkampungan nelayan di Bagan Sungai Yu tersebut khususnya dapat membezakan tanah kautan sungai di sepanjang tepi Sungai Bagan Yu tersebut yang menjadi tanah Kerajaan Negeri Selangor menurut Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan tanah HSD 280954 PT 821 tersebut;

- (2) Sambilan kepada perintah (1) dan/atau untuk menjalankan proses pengukuran semula:*
 - (a) Perintah bahawa dalam tempoh 14 hari dari tarikh penyampaian perintah meterai ini, Pengarah Tanah dan Galian Negeri Selangor hendaklah membuat permintaan bertulis kepada Defendan Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) di bawah seksyen 353(1) Kanun Tanah Negara untuk menjalankan pengukuran semula mengenai Lot PT 821 bagi masuk perintah (1) di atas;*
 - (b) Dalam pengukuran semula itu, Defendan Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) hendaklah mengambil-kira paras air pasang di sungai*

semasa ombak musim bunga biasa (“high water mark of ordinary spring tides”);

- (c) *Dalam pengukuran semula itu, Defendan Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) hendaklah menjalankan tugas-tugas beliau di bawah Kanun Tanah Negara berkatian dengan pengukuran semula dan juga menyediakan pelan-pelan ukuran yang megenalpastikan dan membezakan (i) garis sempadan tanah kautan sungai, (ii) garis sempadan dan garis air pasang sepanjang tebing sungai di kawasan itu semasa ombak musim bunga biasa, (iii) garis sempadan air sungai selepas hari hujan lebat di bahagian hulu sungai; (iv) sempadan tanah Lot PT 821 yang disalinkan daripada suratan hakmilik tanah; (v) lokasi, posisi, dimensi dan sempadan bangunan-bangunan yang diduduki oleh Plaintif-Plaintif berbanding dengan garis-garis dan sempadan-sempadan yang dinyatakan dalam item-item (i) hingga (iv);*
- (d) *Pancang-pancang ukuran hendaklah dipasang untuk membolehkan pihak-pihak Plaintif-Plaintif dan Defendan-Defendan dalam kes itu supaya menyemak dan memeriksa (jika mereka ingin berbuat demikian) kebetulan dan ketepatan pengukuran semula itu dan juga penandaan garis-garis dan sempadan-sempada item-item (i) hingga (iv) di atas, dan gambar-gambar kerja semasa pemasangan hendaklah diambil untuk*

rekod.

- (3) *Selepas pengukuran semula dan kerja-kerja sampingan telah disiapkan menurut perintah (1) dan (2) di atas, Defendan Ketiga Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) hendaklah membekalkan salinan-salinan diakui sah bagi pelan-pelan dan lukisan-lukisan yang berkenaan kepada Mahkamah ini dan juga kepada semua pihak dalam kes ini;*
- (4) *Kos-kos pengukuran semula dan penyediaan pelan-pelan dan lukisan-lukisan hendaklah dibayar oleh pihak-pihak dalam kes ini kepada Defendan Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) sebagaimana yang berikut: (a) 50% oleh Plaintiff-Plaintif, dan (b) 50% oleh Defendan Kelima dan Defendan Keenam”;*

OTHER QUESTIONS RELATING TO THE 5TH DEFENDANT GABUNGAN MELOR

46. In support of their argument that the previous landowners had given them the permission and licence to build houses there and occupy there, the Plaintiffs rely upon inter alia the following evidence:
 - (1) the 6th Defendant (Plusbury) had assigned and/or given rights to Goldpage Assets Sdn Bhd to develop the lands including Lot PT 821 : paragraphs 9 of Plaintiffs Affidavit-in-Support (Enclosure 2);

- (2) Goldpage Assets Sdn Bhd, on behalf of itself and Plusbury (6th Defendant), via their submission and obtaining of Kebenaran Merancang in 2010 recognised and/or confirmed that a significant parts of the lands including area occupied by the Plaintiffs had been encroached by river land would therefore remain as traditional fishing village houses and shops for tourist attraction, paragraphs 9, 54 and Exhibit “TCL-1” to the Plaintiffs’ Affidavit-in-Support (Enclosure 2).
- (3) averments that to the knowledge and with the consent of the previous registered proprietors, the Plaintiffs have been occupying the houses and shops for many years and it has been public knowledge that the Plaintiffs’ shops have been operating as seafood restaurants and seafood trading shops for many years and a tourist attraction for many years: paragraphs 9 to 16, 56 to 58 of the Plaintiff’s Affidavit-in-Support. (Enclosure 2); photographs of shops, houses and river and river beds: see Exhibits “TCL-20” to “TCL-73” listed in paragraph 16 above; paragraphs 66 to 75 of the Plaintiff’s Affidavit-in-Reply (Enclosure 11).

47. In the public notice for auction sale, there are among others the following terms and the conditions of sale precautionary statements:

“6. PENAWAR ADALAH BERTANGGUNGJAWAB UNTUK MENGENALPASTI BUTIR-BUTIR HAK TANAH, DAN MEMASTIKAN SEGALA TANGGUNGAN SERTA BEBANAN HARTANAH ADALAH TEPAT”

*“23. Hartanah yang berjaya dilelong adalah dipercayai dan akan dianggap sebagai diperihalkan dengan betul dan **dijual tertakluk kepada semua ismen (easement), kaveat, tenansi, tanggungan dan hak (jika ada) yang wujud di atas atau terhadapnya yang timbul untuk mentakrif ia masing-masing** dan tiada kesilapan kenyataan yang salah atau deskripsi yang salah akan membatalkan penjualan dan tiada bayaran gantirugi yang akan dibuat.*

The Proclamation of Public Auction, “**LELONGAN AWAM**”, contained this note:

*“NOTA : Bakal-bakal pembeli adalah dinasihatkan agar membuat carian Hakmilik secara rasmi di Pejabat Tanah dan **memeriksa semua tanggungan, bebanan serta mengenal pasti dengan tepat hartanah tersebut** sebelum jualan lelongan dijalankan “*

The English version of “PUBLIC AUCTION” contained this note :

“Note : Prospective bidders are advised to conduct an official Title search at the relevant Land Office and **inspect the subject property prior to the auction sale**”

“LOCATION AND DESCRIPTION OF PROPERTY

The Subject property comprises vacant commercial land and bearing postal address of Lot PT No. 821, Pekan Pasir Penambang, 45000 Kuala Selangor, Selangor Darul Ehsan“

48. The Plaintiffs argue that in the entire circumstances of the present case, they have legal and/or equitable rights and interests to continue to occupy the houses and shops notwithstanding the 5th Defendant/Melor's purchase of Lot PT 821 at the auction sale.
49. In light of the evidence adduced in our present case, this Court has found at the stage of O.18 r.19 that there are serious triable issues concerning the 5th Defendant as to –
- (1) whether or not the Plaintiffs or some of them in fact had any permission or consent of the previous owner Federal Oil Mills Berhad to build the shops and houses at the subject-land and/or to occupy the shops and houses;
 - (2) whether or not the 5th Defendant (Plusbury Development Sdn Bhd) in the course of their negotiations with Federal Oil Mills Bhd had knowledge of the Plaintiffs' permission and/or consent from Federal Oil Mills Bhd and/or had by words or conduct recognised the Plaintiff's rights or equitable interests (if any) in continuing to occupy the said houses and shops;
 - (3) whether or not Goldpage Assets Sdn Bhd, on behalf of itself and Plusbury Development Sdn Bhd(6th Defendant), via their submission and obtaining of Kebenaran Merancang in 2010 had recognised and/or confirmed that a significant parts of the lands including area occupied by the Plaintiffs had been encroached by river land would therefore remain as traditional fishing village houses and shops for tourist attraction and had thereby recognised the Plaintiff's rights or equitable interests

in continuing to occupy the said houses and shops and/or were thereby estopped from denying the Plaintiff's rights or equitable interests in continuing to occupy the said houses and shops;

- (4) whether or not the 5th Defendant (Gabungan Melor Sdn Bhd) had actual or constructive knowledge of the Plaintiff's alleged rights or equitable interests in continuing to occupy the said houses and shops and/or is estopped from denying the Plaintiff's rights or equitable interests in continuing to occupy the said houses and shops; and
- (5) whether or not the 5th Defendant (Gabungan Melor Sdn Bhd) by the terms of the public auction or sale contract in the public auction took the land Lot PT 821 subject to the Plaintiff's alleged rights or equitable interests in continuing to occupy the said houses and shops;
- (6) whether or not the 5th Defendant's Notices of Eviction are null or invalid, which again depend on the following questions:
 - (a) whether or not the areas of land occupied by the Plaintiffs has reverted to the State Authority or remain as part of the alienated land in Lot PT 821 – this is a question of mixed fact and law which in turn depends on disputed issues of fact relating to the re-survey which should be disposed of by *viva voce* trial;

- (b) whether or not the previous proprietors Federal Oil Mills Bhd and/or Plusbury Development Sdn Bhd (6th Defendant) gave any legal or equitable rights or interests to the Plaintiffs or some of them regarding the areas occupied by them, and if so, whether or not the 5th Defendant is by law or equity bound by the same in the circumstances of our present case – these are questions of mixed fact and law which in turn depends on disputed issues of fact.

50. In the circumstances, this Court finds that it is appropriate that these triable issues in paragraph 49 above should be dealt with and disposed of by way of *viva voce* trial together with the disputed issues on the extent and line of river encroachment after the official re-survey has been completed pursuant to the order of re-survey as stated in paragraph 45 above.

OTHER QUESTIONS RELATING TO THE 6TH DEFENDANT

51. In support of their argument that the previous landowners had given them the permission and licence to build shops, restaurants and other buildings there and occupy them, the Plaintiffs rely upon *inter alia* the following evidence:

- (1) the 6th Defendant (Plusbury) had assigned and/or given rights to Goldpage Assets Sdn Bhd to develop the lands including Lot PT 821 : paragraphs 9 of Plaintiffs Affidavit-in-Support (Enclosure 2);

- (2) Goldpage Assets Sdn Bhd, on behalf of itself and Plusbury (6th Defendant), via their submission and obtaining of Kebenaran Merancang in 2010 recognised and/or confirmed that a significant parts of the lands including area occupied by the Plaintiffs had been encroached by river land would therefore remain as traditional fishing village houses and shops for tourist attraction, paragraphs 9, 54 and Exhibit “TCL-1” to the Plaintiffs’ Affidavit-in-Support (Enclosure 2).
- (3) averments that to the knowledge and with the consent of the previous registered proprietors including the 6th Defendant, the Plaintiffs have been occupying the houses and shops for many years and it has been public knowledge that the Plaintiffs’ shops have been operating as seafood restaurants and seafood trading shops for many years and a tourist attraction for many years: paragraphs 9 to 16, 56 to 58 of the Plaintiff’s Affidavit-in-Support. (Enclosure 2); photographs of shops, houses and river and river beds: see Exhibits “TCL-20” to “TCL-73” listed in paragraph 16 above; paragraphs 66 to 75 of the Plaintiff’s Affidavit-in-Reply (Enclosure 11).

52. In the Plaintiff’s Affidavit-in-Support (Enclosure 2), the Plaintiffs alleged that their legal and/or equitable rights and interests to continue to occupy the houses and shops in the circumstances of the present case are said to be obtained during the times of the previous proprietors Federal Oil Mills Sdn Bhd and the 6th Defendant (Plusbury) and the Plaintiffs have also allege that the said legal and/or equitable rights and interests to continue to occupy the houses and shops continued despite the sale or divestment of

proprietorship by the 6th Defendant to Goldpage Assets Sdn Bhd and subsequently to the 5th Defendant (5th Defendant).

53. From the evidence adduced in our present case, this Court finds that there are *inter alia* the following disputed factual issues which are appropriate to be heard and disposed of by *viva voce* trial after the re-survey has been carried out by the 3rd Defendant (Director of Survey and Mapping) –

- (1) whether or not the Plaintiffs or some of them in fact had any permission or consent of the previous owner Federal Oil Mills Berhad to build the shops, restaurants and buildings at the subject-land and/or to occupy the shops and houses;
- (2) whether or not the 6th Defendant (Plusbury Development Sdn Bhd) in the course of their negotiations with Federal Oil Mills Bhd had knowledge of the Plaintiffs' permission and/or consent from Federal Oil Mills Bhd and/or had by words or conduct recognised the Plaintiff's rights or equitable interests (if any) in continuing to occupy the said houses and shops;
- (3) whether or not Goldpage Assets Sdn Bhd, on behalf of itself and Plusbury Development Sdn Bhd (6th Defendant), via their submission and obtaining of Kebenaran Merancang in 2010 had recognised and/or confirmed that a significant parts of the lands including area occupied by the Plaintiffs had been encroached by river land would therefore remain as traditional fishing village houses and shops for tourist attraction and had thereby recognised the Plaintiff's rights or equitable interests

in continuing to occupy the said houses and shops and/or were thereby estopped from denying the Plaintiff's rights or equitable interests in continuing to occupy the said houses and shops;

- (4) whether the 6th Defendant knew of the Plaintiffs' alleged equitable rights allegedly derived from Federal Oil Mills Berhad before the 6th Defendant assigned or divested the entirety of its rights to and interest in the land to Goldpage Assets Sdn Bhd; and
- (5) whether the 6th Defendant in assigning or divesting the entirety of its rights to and interest in the land to Goldpage Assets Sdn Bhd had acted in breach of any obligation vis-à-vis the Plaintiffs' alleged equitable rights.

SUMMARY OF DISPUTED FACTUAL ISSUES FOR *VIVA VOCE* TRIAL

54. In summary, this Court held that in the circumstances of the present case, the following disputes of factual issues ought to be heard and disposed of by way of *viva voce* trial:

- (1) The extent of the encroachment by river and the boundary of the river encroachment line;
- (2) whether the 6th Defendant (Plusbury Development Sdn Bhd) by itself or its authorised representative has admitted or acknowledged that 25 acres of lands (including those parts

occupied by the Plaintiffs) has been encroached by river or has previously suggested that the 25 acres be excluded from the sale and purchase transaction and/or from the computation of the purchase price by reason of river erosion or river encroachment;

- (3) whether the 6th Defendant (Plusbury Development Sdn Bhd) by itself or its authorised representative has admitted or acknowledged that 25 acres of lands (including those parts occupied by the Plaintiffs) has been encroached by river or has previously suggested that the 25 acres be excluded from the sale and purchase transaction and/or from the computation of the purchase price by reason of river erosion or river encroachment;
- (4) whether Federal Oil Mills Berhad or the 6th Defendant has ever carried out any final survey on the boundary of part of the lands encroached by river or which has formed part of the river bed in the past and, if so, what was the area or boundary of river encroachment at that time;
- (5) whether the river bed or boundary of river bed or river encroachment has been acknowledged or recognised by Majlis Daerah Kuala Selangor in the Planning Approval given to Goldpage Assets Sdn Bhd, the company who submitted the application for planning approval in the name of the 6th Defendant;

- (6) whether Goldpage Assets Sdn Bhd in its correspondence or its application for planning approval has confirmed or acknowledged that part of Lot PT 821 had been encroached by river or became part of river bed and if so, the effect of such confirmation or acknowledgement on the issues between the Plaintiffs and the Defendants herein;
- (7) whether Goldpage Assets Sdn Bhd submitted the application for planning approval as the representative of the 6th Defendant Plusbury and/or with the consent or knowledge of the 6th Defendant;
- (8) whether the issuance of Temporary Occupation Licences (if any) by the Land Office to the Plaintiffs or other persons who similarly occupy the river bank areas constitutes confirmation or recognition by the relevant authority that the land areas comprised in the TOLs have formed part of the State land;
- (9) whether the Plaintiffs or some of them have obtained the permission or consent of Federal Oil Mills Sdn Bhd and/or the 6th Defendant (Plusbury) to build the shops, restaurants and buildings there or to occupy the area at the river bank;
- (10) whether the Plaintiffs have acquired any rights under the laws or equity to occupy the relevant parts of Lot PT 821;
- (11) whether the Plaintiffs in the circumstances of the present case have any rights under the laws or equity against the 5th Defendant and/or the 6th Defendant.

ORDERS AND DIRECTIONS MADE UNDER O.28 RR.4, 8 AND 9 OF RULES OF COURT 2012

55. Arising from this Court's finding that there are factual issues which ought to be tried in a *viva voce* trial as they are not suitable for disposal by affidavit evidence, this Court on 13 December 2021 also made the following orders and directions pursuant to O. 28 rr. 4, 8 and 9 of the Rules of Court 2012:

(1) Factual issues in dispute which ought to be tried *viva voce* [including the factual issues listed in sub-paragraphs (1) to (11) in paragraph 56 above] shall be heard and disposed of by way of *viva voce* trial as follows:

(a) All affidavits filed herein shall stand as pleadings; and

(b) Parties shall prepare and file Bundle of Pleadings, Common Bundles of Documents, Summary of Case, Witness Statements and ancillary documents as may be directed by this Court in the case management sessions;

(2) Liberty is given to the parties to apply for ancillary or supplementary orders or directions.

CONCLUSION

56. In conclusion, this Court on 13 December made the following orders and directions:

(1) *Satu perintah terhadap Defendan Pertama hingga Defendan Keempat untuk mengambil langkah-langkah yang perlu untuk melaksanakan dan/atau membolehkan pelaksanaan pengukuran semula semua tanah kautan sungai menurut maksud Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan mengukur semula keluasan sebenar Hartanah HS(D), 280954 Lot PT 821, Pekan Pasir Penambang, Daerah Kuala Selangor, Negeri Selangor Darul Ehsan supaya ukuran terkini, baru dan tepat yang boleh menggambarkan keadaan sebenar dan terkini bentuk muka bumi kawasan perkampungan nelayan di Bagan Sungai Yu tersebut khususnya dapat membezakan tanah kautan sungai di sepanjang tepi Sungai Bagan Yu tersebut yang menjadi tanah Kerajaan Negeri Selangor menurut Seksyen 49 dan 382A Kanun Tanah Negara 1965 dan tanah HSD 280954 PT 821 tersebut;*

(2) *Sambilan kepada perintah (1) dan/atau untuk menjalankan proses pengukuran semula:*

(a) *Perintah bahawa dalam tempoh 14 hari dari tarikh penyampaian perintah meterai ini, Pengarah Tanah dan Galian Negeri Selangor hendaklah membuat permintaan bertulis kepada Defendan Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) di bawah seksyen 353(1)*

Kanun Tanah Negara untuk menjalankan pengukuran semula mengenai Lot PT 821 bagi masuk perintah (1) di atas;

- (b) Dalam pengukuran semula itu, Defendan Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) hendaklah mengambil-kira paras air pasang di sungai semasa ombak musim bunga biasa (“high water mark of ordinary spring tides”);*
- (c) Dalam pengukuran semula itu, Defendan Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) hendaklah menjalankan tugas-tugas beliau di bawah Kanun Tanah Negara berkaitan dengan pengukuran semula dan juga menyediakan pelan-pelan ukuran yang megenalpastikan dan membezakan (i) garis sempadan tanah kautan sungai, (ii) garis sempadan dan garis air pasang sepanjang tebing sungai di kawasan itu semasa ombak musim bunga biasa, (iii) garis sempadan air sungai selepas hari hujan lebat di bahagian hulu sungai; (iv) sempadan tanah Lot PT 821 yang disalinkan daripada suratan hakmilik tanah; (v) lokasi, posisi, dimensi dan sempadan bangunan-bangunan yang diduduki oleh Plaintiff-Plaintif berbanding dengan garis-garis dan sempadan-sempadan yang dinyatakan dalam item-item (i) hingga (iv);*
- (d) Pancang-pancang ukuran hendaklah dipasang untuk membolehkan pihak-pihak Plaintiff-Plaintif dan Defendan-*

Defendan dalam kes itu supaya menyemak dan memeriksa (jika mereka ingin berbuat demikian) kebetulan dan ketepatan pengukuran semula itu dan juga penandaan garis-garis dan sempadan-sempadan item-item (i) hingga (iv) di atas, dan gambar-gambar kerja semasa pemasangan hendaklah diambil untuk rekod.

- (3) Selepas pengukuran semula dan kerja-kerja sampingan telah disiapkan menurut perintah (1) dan (2) di atas, Defendan Ketiga Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) hendaklah membekalkan salinan-salinan diakui sah bagi pelan-pelan dan lukisan-lukisan yang berkenaan kepada Mahkamah ini dan juga kepada semua pihak dalam kes ini;*
- (4) Kos-kos pengukuran semula dan penyediaan pelan-pelan dan lukisan-lukisan hendaklah dibayar oleh pihak-pihak dalam kes ini kepada Defendan Ketiga (Pengarah Ukur dan Pemetaan Negeri Selangor) sebagaimana yang berikut: (a) 50% oleh Plaintiff-Plaintif, dan (b) 50% oleh Defendan Kelima dan Defendan Keenam;*
- (5) Isu-isu fakta yang dipertikaikan dalam kes ini yang harus dibicara penuh secara viva voce [termasuk 11 isu-isu fakta yang disenaraikan di atas] hendaklah dibicara penuh melalui perbicaraan viva voce, dan oleh itu, adalah diperintahkan menurut A. 28 Kaedah-Kaedah Mahkamah 2012 bahawa:*

- (a) *Semua affidavit-afidavit yang difailkan dalam kes itu dijadikan sebagai pliding-pliding;*
- (b) *Pihak-pihak hendaklah menyediakan Ikatan Pliding, Ikatan Dokumen Bersama, Ringkasan Kes, Penyata-Penyata Saksi dan dokumen-dokumen sambilan yang akan diarahkan oleh mahkamah ini dalam sesi-sesi pengurusan kes;*
- (6) *Kebebasan diberi kepada pihak-pihak untuk memohon perintah-perintah atau arahan-arahan sambilan atau sampingan.*

Pengurusan kes selanjutnya untuk Lampiran 1 ditetapkan di hadapan Pendaftar melalui e-review pada **4 Januari 2022** jam 10.00 pagi.”

Dated this: 10th January 2022

Signed

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TEE GEOK HOCK
JUDICIAL COMMISSIONER
HIGH COURT OF MALAYA AT SHAH ALAM
(NCVC 10)

To the parties' solicitors:

1. For the Plaintiffs : Nurul Aqilla binti Salleh
Messrs Mohaji Hazury & Ismail
(Shah Alam)

2. For the 6th Defendant : Harikrishnan a/l Kanapathy
Messrs K. Harikrishnan & Co.
(Kuala Lumpur)