

**COORDINATING THE FUNCTIONS OF THE FEDERAL LANDS
COMMISSIONER IN ADMINISTERING THE LANDS IN THE FEDERAL
TERRITORIES**

ANESH GANASON¹

ABSTRACT

The Federal Lands Commissioner was established in accordance of the Federal Lands Commissioner's Act 1957 (Act 349) to assist the Federal Government to hold lands in the States of the Federation of Malaysia. The concept of relationship between Federal and State Governments in the Federal Territories differs from the other States due to the special status of these territories. All lands in the Federal Territories are Federal land and the identification of state reserves or federal reserves which have been practiced in the other states in accordance to Article 85(5) of the Federal Constitution shall not apply. The question of the need of the Federal Government to hold lands in these Federal Territories under titles and reserves can be a subject of discussion. The study was based on interpreting the various articles and provisions in the Federal Constitution of Malaysia, the National Land Code 1965 and the Federal Lands Commissioner 1957 Act. Based on these legislations a comparison was done with the current procedures and guidelines of Federal Land Management in the Federal Territories of Kuala Lumpur and Putrajaya to establish the practices that are in place. From the literatures obtain the preliminary findings illustrated some practices of Federal Land Management in the Federal Territories of Kuala Lumpur and Putrajaya were similar to practices done in other states despite these territories had special provisions that does not need these practices. The study suggest that the Department of the Director General of Lands and Mines (Federal) to look into the current practices and procedures and amend it in accordance to the needs of the legislations and not based on the practices in common.

¹ Principal Assistant Director, Research and Consultation Division, Department of the Director General of Lands and Mines (Federal).

ABSTRAK

Jawatan Pesuruhjaya Tanah Persekutuan diwujudkan selaras dengan peruntukkan Akta Pesuruhjaya Tanah Persekutuan 1957 [Akta 349] untuk membantu Kerajaan Persekutuan memegang tanah bagi pihak Kerajaan Persekutuan. Kedudukan Wilayah-wilayah Persekutuan Kuala Lumpur dan Putrajaya adalah berbeza dengan Negeri-negeri lain kerana kedudukan istimewanya. Semua tanah kerajaan di Wilayah-wilayah Persekutuan Kuala Lumpur dan Putrajaya adalah dibawah penguasaan Kerajaan Persekutuan. Persoalan timbul perlukah Kerajaan Persekutuan memegang tanah di Wilayah-wilayah Persekutuan Kuala Lumpur dan Putrajaya dalam bentuk hakmilik atau rizab berwarta selaras dengan Perkara 85(5) Perlembagaan Persekutuan. Kajian ini dilaksanakan berdasarkan interpretasi peruntukan-peruntukan sedia ada didalam Perlembagaan Persekutuan Malaysia, Kanun Tanah Negara 1965 dan Akta Pesuruhjaya Tanah Persekutuan 1957 (Akta 349) dan dibandingkan dengan prosedur dan garis panduan Pengurusan Tanah Persekutuan sedia ada di Wilayah-wilayah Persekutuan Kuala Lumpur dan Putrajaya. Daripada hasil kajian literatur pendapatan awalan menunjukkan amalan-amalan Pengurusan Tanah Persekutuan di Wilayah-wilayah Persekutuan Kuala Lumpur dan Putrajaya adalah sama dengan amalan yang dilaksanakan di negeri-negeri yang lain walaupun status Wilayah-wilayah Persekutuan ini adalah istimewa dan tidak memerlukan amalan yang dilaksanakan. Kajian ini mencadangkan kepada Jabatan Ketua Pengarah Tanah dan Galian Persekutuan untuk melihat semula serta meminda prosedur dan amalan Pengurusan Tanah Persekutuan di Wilayah-wilayah Persekutuan Kuala Lumpur dan Putrajaya supaya selaras dengan peruntukan perundangan yang sedia ada dan bukannya berdasarkan amalan secara lazimnya.

I. INTRODUCTION

The Federal Lands Commissioner was established in 1957 in accordance of the Federal Lands Commissioner's Act 1957 (Act 349). The purpose of establishing this position is to assist the Federal Government to hold lands in the States of the Federation of Malaysia for Federal Government funded projects.

The Federal Constitution of Malaysia has drawn out several articles regarding to the relationship of the Federal and State Governments under Division 6 of the Federal Constitution (Article 73-95E). Articles regarding lands required by the Federal Government for public purposes have been ironed out through articles 83-86. It gives special treatment to the Federal Government if it requires any lands in a particular state, it becomes the duty of that state to acquire or reserve that land for the purpose of the Federal Government after agreeing to terms and conditions set for. These requirements are states clearly in Articles 83-86 of the Federal Constitution. These lands acquired by the Federal Government can be disposed to the states or any individuals or corporation the Federal Government deems fit if it is no longer required by it with the approval of the Federal Government and not through any operation of law relating to land administration. This condition is clearly stated in article 86 of the Federal Constitution.

But things changed when in 1973, when the Federal Constitution was amended through the Federal Constitution (Amendments) (No.2) 1973 Act (Act A206) with the establishment of the Federal Territory of Kuala Lumpur and again with the Federal Constitution (Amendments) 2001 Act (Act A1095) with the establishment of the Federal Territory of Putrajaya. The concept of relationship between Federal and State Governments in the Federal Territories differs from the other States due to the special status of these territories, thus the functions and the treatment of the Federal Lands Commissioner (FLC) differs. But misconceptions and age-old practices have diverted the interpretation of law and implementation of procedures in the day to day functions of the FLC when it comes to executing the authority in these Federal Territories.

II. MANAGEMENT OF FEDERAL LAND

Under Section 4 of Act 349, the FLC may acquire movable or immovable properties:

“Powers of Corporation

4. The Corporation may enter into contracts and may acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender and yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property vested in the Corporation upon such terms as to the Corporation seems fit.”

With this provision the FLC has all the rights of a registered proprietor stipulated in section 92 of the National Land Code 1965.

The FLC has custody of reserved lands for public purposes in various states in accordance to section 62 of the National Land Code. This reserves are recognized has Federal Reserves and are protected under Article 85 (5) of the Federal Constitution and the FLC with the consent of the Federal Government has all rights to use or dispose it to anybody it deems fit with out the consent of the respective State Authorities.

With these powers of managing lands for the Federal Government it has been the practice of the FLC’s office to render services for application of alienation for land from various state authorities in accordance to Article 83 and 85 of the Federal Constitution and section 76 of the National Land Code 1965 and the First Schedule of the respective State Land Rules. The act of acquisition of alienated land is practiced by inducing Article 83 of the Federal Constitution via the Land Acquisition Act 1960.

Acquiring vast amount of land through decades has created a large land bank for the Federal Government. Some acquisitions of lands have been left idle and not developed because of change of managements or policy directions. In a way it might seem to be a waste of resources and improper planning by various agencies but with the introduction of matching relevant unused lands to other interested agencies have made these idle lands to be developed. In some contexts, these lands are leased for a short-term tenancy of three years to avoid encroachment and a way to safeguard the lands without the need of fencing or providing security guards. The most extreme efforts are the act of privatization of these lands for the development of semi commercial or mega public projects that are funded by private initiatives.

These efforts are in accordance to the law and it is protected by the Federal Constitution. But these actions vary when it is implemented in the Federal Territories of Kuala Lumpur and Putrajaya. The modifications of the National Land Code 1965 through the Federal Territory (Modification of National Land Code 1965) Order 1974 P.U.(A) 56 for Kuala Lumpur and Federal Territory of Putrajaya (Modification of National Land Code 1965) Order 2002 P.U.(A) 164 for Putrajaya makes the position of the Federal Government and the FLC as a different entity when it comes to management of land within these territories. These irregularities shall need to be addressed to avoid confusions and challenges by interested parties in the Court of law.

III. IRREGULARITIES IN PRACTICES

With the creation of the Federal Territories of Kuala Lumpur in 1973 and Putrajaya in 2001 through the amendments of the Federal Constitution Act A206 and Act A1095 the usage of the National Land Code 1965 had to be extended to these new territories. These extensions were done through the Modification Orders P.U.(A) 56 for Kuala Lumpur and P.U.(A) 164 for Putrajaya. These modifications provide the enabling provisions of the National Land Code to be executed in these two territories.

With the establishment of these two territories the concept of Federal and State relationships stipulated in the Federal Constitution had to be relinquished because the Federal Territories were under the jurisdiction of the Federal Government. This has been stated in Article 4 of Act A206 for Kuala Lumpur:-

“Jurisdiction over Federal Territory

4. The Federation shall exercise sovereignty over the Federal Territory and all powers and jurisdiction in or in respect of the Federal Territory shall be vested in the Federation.”

And for the Federal Territory of Putrajaya it is stated in Article 4 of Act A1095:-

“Jurisdiction over Federal Territory of Putrajaya

4. The Federation shall exercise sovereignty over the Federal Territory of Putrajaya and all powers and jurisdiction in or in respect of the Federal Territory of Putrajaya shall be vested in the Federation.”

With the coming into force of these amendments the usages of Articles 83-86 have to be altered and read differently. The element of State and Federal relationships does not exist in the Federal Territories. The modification orders of the National Land Code 1965 through P.U.(A) 56 for Kuala Lumpur and P.U.(A) 164 for Putrajaya had modified the reference of “State Authority” in the Code into “The Government of the Federation” and “State land” as “Federal Land”. Legally all lands in the Federal Territories are Federal land and the identification of state reserves or federal reserves which have been practiced in the other states in accordance to Article 85(5) of the Federal Constitution shall not apply.

The office of the FLC still maintains the practice of application of alienation of land and reservation for the Federal Government in the name of the FLC in the Federal Territories of Kuala Lumpur and Putrajaya with the belief that when the lands are alienated to the FLC or reserved under the FLC then the status of the land becomes a Federal Land. Well these acts contradict with the interpretation of the modifications of P.U.(A) 56 and P.U.(A) 164 that

all land in the territories are Federal Land. This act of applications also creates a doubt whether the FLC is acting on behalf of the Federal Constitution or acting as an independent corporation executing its power to hold land as its own in accordance to Section 4 of Act 349.

The question of the need of the Federal Government to hold lands in these Federal Territories under titles and reserves can be a subject of discussion. When all lands in the Federal Territories are Federal Land, why is there a need to reserve lands for public purposes which will held in the context of Federal Reserves for all activities stipulated in List 1 of the Ninth Schedule of the Federal Constitution? There is no need to distinguish between state or federal reserves because there does not exist state land in these territories. This misconception has been practiced or carried along when these territories were carved out from the State of Selangor. The thick allegiance of maintaining that these Territories as States and have their own sovereignty from the Federal Government have contributed to these malpractices.

The practice of disposing reserve lands in the Territories of Kuala Lumpur and Putrajaya in the form of short term tenancy through the Kuala Lumpur Tenancy and Enforcement Committee Meeting held monthly at the office of the FLC can be considered *ultra vires* to section 63 of the National Land Code 1965 with the application of Act A206 and Act A1095 because the FLC has no power to approve tenancy or lease on reserved land.

Section 63 provides the provision for reserve lands to be leased for a period of not more than 21 years:-

“63. Power to lease reserved land.

(1) The State Authority may, on an application made by the officer for the time being having the control of any reserved land, or by any other person or body who has first obtained the approval of that officer, from time to time grant leases of the whole or any part thereof for any period not exceeding twenty-one years.

(2) Any lease granted under this section shall be in Form 4E; and any such lease shall have effect subject to such express condition or other provisions as may be contained therein and, so far as not inconsistent therewith, to any other conditions or provisions which may be prescribed.”

The rights of the Federal Government to dispose lands reserved for Federal purpose in accordance of Article 86 of the Federal Constitution cannot be applied in this matter cause under the amendments of the constitution virtue of Act A206 and Act A1095 stipulates all land in the Federal territories as Federal Land so the FLC on behalf of the Federal Government loses its special positions in that context. When there is no difference in the status of the reserves, the application of the National Land Code as to be adhered when leasing of reserved land in the Federal Territories.

Under the National Land Code 1965 section 63 is the only provision that provides this power to lease and it is approved by the State Authority. So, with the modification of the National Land Code 1965 by P.U.(A) 56 and P.U.(A) 164, State Authority in the Federal Territories is the Federal Government. With this in place one wonders how does the FLC obtains powers to lease reserve lands through this Committee when it does not have the *locus standi* to do so.

The power of the Federal Government in context of land in the Federal Territories can be defined under article 39 of the Federal Constitution where the executive power of the federation may be exercise by the Cabinet or delegated to a Minister by the Cabinet. This provides that the power of the Federal Government is delegated to the Land Executive Committee to exercise all power of the National Land Code in the territories. It can be stimulated that the establishment of Kuala Lumpur Tenancy and Enforcement Committee Meeting was by a Cabinet Decision and with the interpretation of the proviso of subsection 13(1) of the National Land Code any power delegated by the State Authority shall be exercised by the State Authority itself:-

“13. Delegation of powers of State Authority to State Director, etc.

(1).....

Provided that-

(i).....;

(ii).....;

(iii) *the giving of a notification under this section with respect to any power or duty shall not prevent the State Authority from itself exercising that power or performing that duty in any case where it appears to the State Authority expedient to do so.”*

This does not mean that the Cabinet Decision on the establishment of the Committee is seen as a delegation of power to the FLC because the FLC in the first place has no *locus standi* on these reserved lands, he is only a controlling officer on these reserves and does not have full rights on the land to approve leases on these reserves.

If this practice is to continue the Federal Government has to delegate its functions of approving lease on reserve lands in the territories to any other officers mentioned in section 12(1) of the National Land Code by virtue of section 13(1) and it has to be through a Federal Gazette and not through a Cabinet Decision And the FLC is not mentioned as an officer in section 12(1) of the modification order P.U.(A) 128 for Kuala Lumpur and Putrajaya. So, with these discrepancies it can be said that the procedures practices for leasing of federal lands in the Federal Territories carried out by the office of the FLC can be contested in the court of law and ratification must be done soon.

IV. CONCLUSION

The focus of the paper is seen as a preliminary observation of the current practices of the office of FLC in dealing with the management of federal land in the Federal Territories of Kuala Lumpur and Putrajaya in accordance

to the Federal Constitution and the National Land Code 1965. There have been some discrepancies in the misinterpretation of the statutes or continuing of age-old practices from previous administration that might not portray the right picture of the execution of the legislations. These could lead to long legal battles and disputes that could tarnish the image of the Office and the Federal Government.

REFERENCES

1. Federal Land Commissioner Act 1957 (Act 349), Section 3-4;
2. National Land Code 1965 (Act 56 of 1965), Section 5,12,13,63;
3. Federal Constitution 1957, Article 39, 83-86;
4. Federal Constitution (Amendments) (No.2) 1973 Act (Act A206), 1973, Article 4;
5. Federal Constitution (Amendments) 2001 Act (Act A1095), 2001, Article 4;
6. Federal Territory (Modification of National Land Code 1965) Order 1974 P.U.(A) 56;
7. Federal Territory of Putrajaya (Modification of National Land Code 1965) Order 2002 P.U.(A) 164.