

SUBJECT MATTER EXPERT SPECIAL ASSIGNMENT

The Need to Streamline Land Development Applications within the National Land Code 1965

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Abstract—This paper illustrates the need to introduce a single point application to cater the needs for land development applications to reduce red tape, confusion and to create awareness to the public and the market..

Keywords- Surrender, realienation, subdivision, partition, amalgamation, variation conditions, planning authority, state authority.

I. INTRODUCTION

The National Land Code 1965 (NLC) provides provisions that dictate the powers of the State Authority, the protection of propriety rights and registered interests, enabling of dealings and non dealings, the responsibilities of proprietorship and state authorities, land rent and revenue, maintenance of land information, enforcement and land use and development.

Once the creation of rights to land has been established, proprietors will exploit their rights through various opportunities that have been enshrined by the NLC to develop their land. These enabling provisions provide the stage for various development and enhancement of land use which translates to the creation of a robust land market and increase of land revenue.

The current system within the NLC provides various applications that cater to specific mode of development needs. It is very technical and in some cases very confusing to land owners if they are not aware of the land terminologies and also the after effect of each application. This

brings confusion and sometimes delays in executing of these application.

This paper will discuss a proposal to streamline these various development applications to provide easier and user friendly methods to proprietors. By reducing the methods of application it will provide easier understanding by proprietors and makes processing within the land administration rather easier compared to the cumbersome of various provisions and methods of processing development of land. This paper also looks into the initial feedback from land administrators to this proposals and the way forward.

II. LEGISLATIVE INTERPRETATION ON LAND DEVELOPMENT

The availability of multiple options of development applications has caused confusion to the public and to certain extent, some of the officers and staffs of the land administration. This is a result of the differences in each existing provisions, which allows the landowner to choose the provisions that are best suited the proposed development plan or problems and encumbrances on the title or for any other circumstances.

Currently the types of applications that relate to land use and land development are as such:

- i. Application for variation of conditions, restrictions or categories of land use (Section 124 – 124A);
- ii. Subdivision of land (Section 135 -139);
- iii. Partition of land (Section 140 – 145)
- iv. Amalgamation of land (Section 146 – 150)
- v. Surrender of whole land (Section 197 – 199);
- vi. Surrender of part of land (Section 200 – 202);
- vii. Surrender and Realienation of contiguous lots (Section 203-204);
- viii. Surrender and Realienation (204A – 204H)

The provisions mentioned above to a land administrator might be simple but it is somehow complicated and there are differences in consequences that the general public do not know or understand. For example, the difference between an application for subdivision and partition can be noticed by the title issued.

Amendment through the enforcement of National Land Code (Amendment) 2008 (Act A1333) provided a major move forward for partitioning of land. With the new amendments it made allowance for agricultural lands below 2/5 hectares to be partitioned. This amendment also shifted some of the decisions to approve these sorts of applications from the Land Administrator to the State Authority. The ability for minority share owners in a co proprietorship to apply for partitioning is another ground breaking efforts to ease the deadlocks of development on land.

Similarly in case of an application for amalgamation, where complications might arise in certain circumstances where it involves two level of approval albeit section 147, whereby the sanction of the State Authority is required before the Director of Lands and Mines or Land Administrator may approve any such applications.

An application for surrender and re-alienation under section 203 and 204 of the NLC are only applicable for contiguous lots held by the same proprietor under Land Office Title. The

purpose of this provision is to enable the land to be re-alienated in the form and unit different from its original form, the form it was prior to alienation. Furthermore, this type of application is not common and hardly used and the requirement of this provision is not clear and difficult to comprehend.

Section 124A and sections 204A-204H was first introduced through the enforcement of National Land Code (Amendment) 1984 (Act A587) on 1 June 1985. The new provision provides that the land owner may apply for subdivision and variation of condition simultaneously compare with the previous practice where it must undergo three stages as follows. The amendments at that time facilitated the land owners who planned to develop their land as a mixed development area with various facilities, which involved several land utilization in the easiest way without having to go cumbersome processes of the previous restriction of the legislation.

NLC also introduced new provisions for the application for surrender and re-alienation under section 204A to section 204H. These provisions were additional options available for the landowner should, they intent to develop their land especially for a comprehensive housing project. The other options presently available are an application for sub- division, alteration of conditions and sub division, amalgamation and sub-division, alteration of conditions, amalgamation and sub-division and a concurrent application for sub-division and alteration of conditions. These options are an alternative provided for in section 204A of the NLC. The provision of section 204A seems to be a combination of an application for surrender the whole of the land under section 197 and a disposal by way of alienation under section 76 (Part Five, Chapter 1).

In accordance to the National Land Code 1965 development applications on land has to be in line with planning permission from the Local Authorities. The definition of development in the Town and Country Planning Act 1976 (Act

172) relates to subdivision or amalgamation of land only. Procedures under the One Stop Centre (OSC) 3 Plus Manual pertaining to development require planning permission for any applications regarding subdivision and amalgamation. The manual also stress upon applications under section 214A dan 204D of the NLC. So from the perspective of Local Authorities the need for planning permission in regards of partitioning is silent under Act 172 but the NLC requires the applicant for partitioning to obtain approvals from the state planning authorities.

The initial findings will provide an understanding on the legislatives predicaments in implementing a streamlined land development process in land administration.

III. PROBLEM AND OBJECTIVES

The research is proposed based on the following gaps:

- Too many application options pertaining to land development that leads to confusion and technical errors;
- To delay in preparing documentation for approval and planning purposes due to the various application provisions
- To reduce the need to provide various application forms and procedures in the implementation of online land administration in the pretext of land development

The objectives of the proposed research were developed based on the following guiding principles:

- Uniformed guidelines and cost cutting procedures for land development activities;
- Provide emphasis towards future development and sustainability of land use

Thus the objectives and scope of the proposed research have been derived as follows:

- a. To investigate the existing practices and conditions in processing land development applications in the respective Department of Lands and Mines, and Land offices within the context of the National Land Code 1965.
- b. To identify and suggest uniformed criteria for land development processes.

IV. FINDINGS AND DISCUSSIONS

An earlier research had made some recommendation that there could be three options that the land administration could venture into when it comes to land development approvals. Those options are as such:

- i. by retaining the provision of section 124 for an application to alter conditions that involved either alteration, amendment, cancellation or imposition of conditions, category of land use or restriction in interest which does not involve sub-division or partition or amalgamation;
- ii. by retaining the provision of section 195 to section 202 of Part Twelve for an application to surrender whole or part of the land; and
- iii. Instead, the provision of sections 204A to section 204H can be applied as substitute to the provision of section 203, 204, 124A and the provisions relating to sub-division, partition and amalgamation in Chapter 1, 2 and 3 of Part Nine is proposed to be repealed.

With these proposals, a simple survey was conducted on the Directors and Deputy Directors of Land and Mines to obtain their initial reactions on the idea of reducing the number of applications pertaining to land development. Seven different elements were developed to construe the notion of streamlining land development applications. The elements that were taken into consideration are as such:-

- a. There are many development applications in the National Land Code currently;
- b. The application forms are confusing to the land administration officers;
- c. Is it better to reduce the application methods to 1 or 2;
- d. Is it better to combine the certain development applications;
- e. The provisions of simultaneous application for variation condition and subdivision and surrender realienation are maintained for development applications;
- f. By reducing the methods of application it will reduce time and cost of development;
- g. Having limited development applications will assist the state planning authority in determining the planning of a particular state.

These elements were the basic elements that could trigger the need for streamlining of the various applications by covering the aspects of time, financial and human resources in the Land administration and also to invoke the idea of structured good governance in approving land development.

The response from the survey showed that 69% of the Directors and Deputy Directors are in favour of the current mechanism with specific applications for each and every land development applications. This result shows that they are very happy with the regimented approach of applications where one could easily identify the modus of the development by just looking at the application form that has been submitted. This also concurs with 56% of the respondents disputing that the application forms are not confusing to the land administrators. From this first two elements, it seems the research was heading to the negative for a reform in restructuring in the methods of land development applications.

But the next two elements painted a different picture towards the findings of the research. About 69% of the respondents agreed that the applications for development should be

simplified. But the notion received a mixed response from the respondents when the idea of combining the applications of subdivision, amalgamation and partitioning into a single application using surrender and realienation under section 204D. 52% of the respondents favoured that the NLC should still maintain separate provisions in regards to variation of condition via Section 124, simultaneous application for variation condition and subdivision via section 124A and surrender and realienation under section 204D. From the response obtained it shows that the land administration is happy with the current provisions but feels that some archaic elements or procedures within those provisions should be looked into to facilitate the changes in the development processes.

Majority of the respondents agreed that by revamping the procedures will definitely reduce cost and time in processing but it will also provide added benefits to the state planning authority in determining the development approach or policies in the future. Having ample information and strategies would assist in the future planning and also to formulate a much more holistic national physical plan.

The next stage of the research was to look into the current provisions in the NLC to provide an avenue to manoeuvre a proposal to streamline the multiple development applications to a couple of applications. The aspects that were looked upon was the power of approvals, the need of preparations of plans, approvals by the state planning authority and the rights of the proprietor.

Under section 124 and 124A the power of approval is with the State Authority. Nothing in the NLC mentions that these powers have been delegated to the State Director or the Land Administrator. The variation of conditions of land is considered an improvement towards the land and involves the alteration of conditions and also the rent of the land. These elements are vital in the aspects of rights of proprietor to develop the land in accordance to the conditions in the title. The introduction of section 124A via National Land

Code (Amendment) 1985 (Act A587) was an improvement towards the procedures when a proprietor wanted to apply for subdivision and alter the conditions at the same time. Before the amendments a proprietor would have to alter the conditions first and after obtaining the approval he will apply for a subdivision or vice versa. This process was long and tedious and consumes a high cost in term of premiums and office fees charged by the land offices. The authority that approves also defers in the old method where subdivision was approved by the Director or Land Administrator while the variation of condition by the state authority. With the introduction of section 124A a proprietor could simultaneously apply for variation condition and subdivision and the application will be approved by the state authority. The reducing paper work and time for processing had reduced tremendously. With the improvement done through the OSC 3 Plus Manual pertaining the approval from the state planning authority, planning permission has become much easier for applicants. In this spirit of reducing bureaucracy and procedures that this research was based to overcome cumbersome and tedious application processes.

The application for subdivision, partitioning and amalgamation is covered by Part Nine of the NLC. The applications in this Part are approved by the Director or the Land Administrator and in the case of amalgamation subjected to conditions under subsection 147(2) and partitioning of agricultural land which are 2/5 hectare or less the application is approved by the State Authority. Under this Part lands which are categorized as estate land needs to obtain approval from the Estate Land Board prior to an approval for the purpose of subdivision and this is also echoed in subsection 124A(1A) dealing with approvals on simultaneous application for variation condition and subdivision of land. The variation of approving authority between the Land Administrator, State Director and the State Authority make it rather tricky to draw a line in introducing a new procedure that could address all the issues.

The conditions for approval for subdivision, amalgamation and partitioning are somewhat interrelated. Land Administrators and State Directors are guided by the provisions in subsection 136(1) and in some cases subsection 136(2). The basic fundamentals are that the application does not contravene the restriction of interest on that land, all necessary approvals from any planning authority have to be obtained; this is in regards of planning permission or development permission by the respective planning authority enshrined by Act 172, no outstanding land revenue, obtain prior consent from all parties who have registered interest on that land i.e. charge, lease or lien and the proprietor has agreed to surrender part of his land for the purpose of excess to all subsequent portions of his land in the results of the approval. Via Act 1333, the new subsection 136(1)(ca) requires the proprietor to surrender part of his land for public purposes as so be determined by the planning authority during approval of planning permission by virtue of Section 197 NLC. This amendment solved the issue of parcels being earmarked for public purposes in the initial planning permission by the state authority from being withheld by the applicant as a result of approval of subdivision. But this amendment also brought the rise of the practice of planning authorities to impose various conditions on surrendering parts of land for public purposes that affects proprietors who are not into mass developments. These proprietors are subjected to surrendering a substantial amount of land for public purposes like open spaces when the applications were done for personal use or in the case of love and affection.

Another major improvement towards land development pertaining to partitioning was through amendments by Act 1333 which allowed proprietors holding agricultural land of 2/5 hectares and below to be allowed to apply for partition of land. Before 2008 even agricultural land which is over 2/5 hectare but the subsequent portions of the partition is less than 2/5 hectare cannot be partitioned. Due to this restriction many small holders of agricultural land were stuck in improving the value of their land. The

improvement to the subsection 140(3), 141(1c), 142 and 143(3A) allowed this to be implemented and solved the issues of improving agriculture small holders issues in the nation. Via Act 1333 also an improvement on section 141A enables any co-proprietor whether they are the majority shareholder or minority shareholder can apply for partitioning. This amendments does not discriminates the minority and favours the majority and resolves many issues on disputes among co-proprietors.

During the observation of sections 203 and 204, the powers of approval for the application of surrender and realieanation of contiguous lots held under Land Office title is under the Land Administrator. The NLC had been amended various times and the power for disposal by virtue of alienation or realienation has been concentrated to the State Authority. To find an anomaly in these two provisions provides a glimmer that the NLC has room to decentralize its powers to the land administrator in the context of disposal or one could construed this anomaly has remnants of various amendments that left out provisions that are lack in use.

V. DISCUSSION

VI. CONCLUSION

The idea of providing options to reduce beurocracy and expedite land applications could be seen as a welcoming sign towards changes. By having a limited number of development applications, it provides more emphasis and care towards processing of land development. Besides that this efforts shall bring confidence and support from the general public towards a better land administration system.

Biographical Notes

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