Pengurusan Danaharta Nasional Bhd v Tang Kwor Ham & Ors and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 02–40 OF 2006 (M) AND 02–43 OF 2006 (M)
ABDUL HAMID MOHAMAD, ALAUDDIN AND ABDUL AZIZ MOHAMAD FCJJ
6 JULY 2007

Administrative Law — Remedies — Certiorari and mandamus — Special administrators appointed under Pengurusan Danaharta Nasional Bhd Act — Respondent sought leave for judicial review of the workout proposal prepared by the special administrator of the company pursuant to O 53 r 3 of the Rules of the High Court 1980 — What amounts to a decision of a public authority — Whether s 72 of the Pengurusan Danaharta Nasional Berhad Act 1998 ousts the jurisdiction of the courts to entertain an application for judicial review

Statutory Interpretation — Aids to construction — Preamble — Whether preamble of a statute may be used to interpret a clear and unambiguous provision in that statute

The respondents were three of the four directors of Tang Kwor Ham Realty Sdn Bhd ('the company'), the sixth respondent in the original proceedings. The company had a non-performing loan ('NPL') of approximately RM26m. On 30 December 1998 Danaharta acquired the NPL. Under s 24 of the Pengurusan Danaharta Nasional Bhd Act 1998 ('the Act'), the second, third and fourth respondents in the original proceedings were appointed the special administrators ('SAs') of the company. Dissatisfied with the workout proposal prepared by the SA, the respondents filed an application at the high court on behalf of themselves and by way of representative and derivative action on behalf of the company for leave for judicial review of the workout proposal prepared by the SAs of the company pursuant to O 53 r 3 of the Rules of the High Court 1980 and a stay of the implementation of the workout proposal until the adjudication of the judicial review. The respondents' application was dismissed by the high court and by a majority decision allowed by the court of appeal. The Federal Court granted leave to the appellants pursuant to s 96 of the Courts of Judicature Act 1964 to appeal against the decision of the court of appeal and the most relevant and important question to be addressed was whether s 72 of the Act ousted the jurisdiction of the courts to entertain an application for judicial review.

Held, allowing the appeal:

(1) The object of Parliament in enacting this law was clearly stated in the preamble to the Act. The Act was required in the public interest to promote the

revitalization of the nation's economy. It was against this background that the Act was passed by Parliament in July 1998. The court found the purpose was clear and unambiguous (see para 44).

(2) Knowledge of the matters considered by the legislature in enacting this law was relevant. Further, it was permissible for the courts, as held by the Federal Court in *Chor Phaik Har v Farlin Properties Sdn Bhd* [1994] 3 MLJ 345 to resort to the *Hansard* as an aid to interpretation. The court could therefore refer to the policy speech of the then Minister of Finance in Parliament while introducing the Bill to the Act (see para 45).

(3) The principles in earlier cases (*Tan Sri Dato' Tajuddin Ramli v Pengurusan Danaharta Nasional Bhd & Ors* [2002] 5 MLJ 720; *Kekatong Sdn Bhd v Bumiputra-Comerce Bank Bhd & Anor* [2002] 6 MLJ 186; *Wong Koon Seng v Rahman Hydraulic Tin Bhd & Ors* [2002] 1 MLJ 98), although dealt with applications for injunction, were equally applicable to certiorari and mandamus as s 72 barred not only orders granting injunctions but also certiorari and mandamus. Thus judicial review by way of certiorari was not available by reason of s 72 of the Act. The orders of the court of appeal ran foul of s 72 of the Act and were unsustainable (see paras 46–50, 53); *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd* [2004] 2 MLJ 257) followed.

[Bahasa Malaysia summary

Responden-responden adalah tiga daripada empat pengarah Tang Kwor Ham Realty Sdn Bhd ('syarikat tersebut'), responden keenam di prosiding asal. Syarikat tersebut mempunyai pinjaman yang tidak aktif ('PTA') sejumlah lebih kurang RM26j. Pada 30 Disember 1998 Danaharta memperoleh PTA tersebut. Di bawah s 24 Akta Pengurusan Danaharta Nasional Bhd 1998 ('Akta tersebut'), responden-responden kedua, ketiga dan keempat di prosiding asal telah dilantik sebagai pentadbir khas ('PK') syarikat tersebut. Tidak puas hati dengan cadangan penyelesaian yang disediakan oleh PK tersebut, responden-responden telah memfailkan satu permohonan di mahkamah tinggi bagi pihak diri mereka sendiri dan juga dalam tindakan perwakilan dan tindakan terbitan bagi pihak syarikat tersebut memohon kebenaran untuk kajian semula kehakiman cadangan penyelesaian itu yang disediakan oleh PK syarikat tersebut menurut A 53 k 3 Kaedah-Kaedah Mahkamah Tinggi 1980 dan satu penggantungan implementasi cadangan penyelesaian tersebut sehingga penyelesaian kajian semula kehakiman tersebut. Permohonan responden ditolak oleh mahkamah tinggi dan melalui keputusan majoriti dibenarkan oleh mahkamah rayuan. Mahkamah Persekutuan membenarkan kebenaran perayu-perayu menurut s 96 Akta Kehakiman Mahkamah 1964 untuk merayu terhadap keputusan mahkamah rayuan dan soalan yang paling penting dan relevan yang penting untuk menumpukan perhatian ialah sama ada s 72 Akta tersebut menyingkirkan bidang kuasa mahkamah-mahkamah untuk mendengar satu permohonan untuk kajian semula kehakiman.

Diputuskan, membenarkan rayuan tersebut:

(1) Tujuan undang-undang ini digubal Parlimen adalah jelas dinyatakan

di mukadimah Akta tersebut. Akta tersebut diperlukan demi kepentingan awam untuk memajukan perkembangan ekonomi negara. Ia adalah atas latar belakang ini Akta tersebut diluluskan oleh Parlimen pada Julai 1998. Mahkamah mendapati tujuan ini adalah jelas dan tidak taksa (lihat perenggan 44).

(2) Pengetahuan akan perkara-perkara yang dipertimbangkan oleh badan perundangan dalam menggubal undang-undang adalah relevan. Lanjutan, ia adalah dibenarkan bagi mahkamah-mahkamah, seperti yang diputuskan oleh Mahkamah Persekutuan dalam *Chor Phaik Har v Farlin Properties Sdn Bhd* [1994] 3 MLJ 345 untuk menggunakan Hansard sebagai suatu bantuan pentafsiran. Mahkamah dengan ini boleh merujuk kepada kenyataan polisi Menteri Kewangan di Parlimen pada masa tersebut apabila memperkenalkan Rang undang-undang Akta tersebut (lihat perenggan 45).

(3) Prinsip-prinsip kes yang terdahulu (*Tan Sri Dato' Tajuddin Ramli v Pengurusan Danaharta Nasional Bhd & Ors* [2002] 5 MLJ 720; *Kekatong Sdn Bhd v Bumiputra-Comerce Bank Bhd & Anor* [2002] 6 MLJ 186; *Wong Koon Seng v Rahman Hydraulic Tin Bhd & Ors* [2002] 1 MLJ 98), walaupun ia mendengarkan permohonan-permohonan untuk injunksi, adalah sama sekali terpakai kepada certiorari dan mandamus oleh kerana s 72 bukan sahaja tidak membenarkan perintah-perintah memberikan injunksi-injunksi tetapi juga certiorari dan mandamus. Dengan itu kajian semula kehakiman melalui certiorari dan mandamus tidak boleh digunakan disebabkan s 72 Akta tersebut. Perintah-perintah mahkamah rayuan melanggar seksyen 72 Akta tersebut dan dengan itu tidak dapat disokong (lihat 46–50, 53); *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd* [2004] 2 MLJ 257) diikut.]

Notes

For cases on certiorari and mandamus, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 470–496.

For cases on preamble, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1766–1774.

Cases referred to

Chor Phaik Har v Farlin Properties Sdn Bhd [1994] 3 MLJ 345 (folld)

Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd [2004] 2 MLJ 257 (folld)

DYTM Tengku Idris Shah Ibni Almarhum Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Chan Teik Huat [2002] 2 MLJ 11 (refd)

Hokkien Cemeteries, Penang v Majlis Bandaran Pulau Pinang [1979] 2 MLJ 121 (refd)

JP Berthelsen v Director General of Immigration, Malaysia & Ors [1987] 1 MLJ 134 (refd)

Kekatong Sdn Bhd v Bumiputra-Comerce Bank Bhd & Anor [2002] 6 MLJ 186 (folld)

Lau Kong Co Ltd v Thong Guan Co Pte Ltd [2004] 4 MLJ 1 (refd)

Mohamed Nordin bin Johan v Attorney General, Malaysia [1983] 1 MLJ 68 (refd)

South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union [1981] AC 363 (refd)

Tan Sri Dato' Tajuddin Ramli v Pengurusan Danaharta Nasional Bhd & Ors [2002] 5 MLJ 720 (folld)

Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd [1995] 2 MLJ 442 (refd)

Wong Koon Seng v Rahman Hydraulic Tin Bhd & Ors [2002] 1 MLJ 98 (folld) A

Legislation referred to

Courts of Judicature Act 1964 s 96
Federal Constitution art 8
Interpretation Acts 1948 and 1967 s 17A
National Land Code s 57, Schedule 15 para 5
Pengurusan Danaharta Nasional Berhad Act 1998 ss 21, 22(4), 24, 25A(3), 41(7), 44, 45, 46, 47, 72
Rules of the High Court 1980 O 53 B

Jeyanthini Kannperan (Sathya Kumardas with him) (Shearn Delamore & Co) for the appellant in Civil Appeal No 02–40 of 2006 (M). C

Lim Whei Chun (Lim Whei Chun) for the first respondent and second in Civil Appeal No 02–40 of 2006 (M).

B Thangaraj for Asian Pacific Management Insight Sdn Bhd in Civil Appeal No 02–40 of 2006 (M). D

Dato' Mary Lim Thiam Suan (Suzana Atan with her) (Senior Federal Counsel, Attorney General's Chambers) for the appellant in Civil Appeal No 02–43 of 2006 (M).

Lim Whei Chun (Lim Whei Chun) for the first respondent and second in Civil Appeal No 02–43 of 2006 (M).

B Thangaraj for Asian Pacific Management Insight Sdn Bhd in Civil Appeal No 02–43 of 2006 (M). E

Alauddin FCJ (delivering judgment of the court):

INTRODUCTION F

[1] There were two appeals before us. The first is Rayuan Sivil No 02–40 of 2006 (M) and the second is Rayuan Sivil No 02–43 of 2006 (M). The appellant in the first appeal is Pengurusan Danaharta Nasional Berhad ('Danaharta') and the appellant in the second appeal is the Attorney General. The respondents in both appeals are Tang Kwor Ham, Lee Tuck Kwai and Tang Sheit Fun. G

[2] On 7 August 2006 the Federal Court granted leave to both appellants pursuant to s 96 of the Courts of Judicature Act 1964 to appeal against the decision of the Court of Appeal and framed the following questions of law for consideration in the appeal: H

Q1: What is the proper test to be applied in an application for leave for judicial review?

Q2: What amounts to a decision of a public authority within the meaning of O 53 of the Rules of the High Court 1980 ('RHC')? I

Q3: Does s 72 of the Pengurusan Danaharta Nasional Berhad Act 1998 ('the Act') oust the jurisdiction of the courts to entertain an application for judicial review?

A **[3]** We heard both appeals on 20 March 2007. Both appeals were allowed with costs to be taxed and the orders of the Court of Appeal were set aside. We also ordered that the deposits be refunded to the appellants.

[4] We shall now give our reasons.

B

BACKGROUND FACTS

[5] The facts are not really in dispute.

C **[6]** Briefly, the respondents who were also three of the four directors of Tang Kwor Ham Realty Sdn Bhd ('the company'), the sixth respondent in the original proceedings, held 60% of the shares in the company.

[7] The company had a non-performing loan ('NPL') of approximately RM26m.

D

[8] On 30 December 1998 Danaharta acquired the NPL. The company became known as an 'affected person' under s 21 of the Act.

E **[9]** Under s 24 of the Act, the second, third and fourth respondents in the original proceedings were appointed as the special administrators ('SAs') of the company.

[10] The company's main assets including land and hotel were identified for sale in order to resolve the company's financial problems.

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[11] In keeping with the framework in ss 44–47 of the Act, the SAs prepared and submitted a workout proposal dated 11 September 2002 to Danaharta who approved the same and the workout proposal was thereafter put before the secured creditors who approved the same at the secured creditors' meeting on 27 September 2002.

G

[12] The workout proposal recommended that the Grand Hill Hotel owned by the company be sold for RM7.6m given the two previous unsuccessful tenders and the failure of the interested party proposed by the directors of the company to complete the purchase at RM7.8m. The respondents claim that the proper value of the property is not less than RM15m. The sale at RM7.6m has since been completed.

H

[13] Dissatisfied with the workout proposal the respondents then filed an application at the High Court on behalf of themselves and by way of representative and derivative action on behalf of the company for the following orders:

I (i) under O 53 r.3 of the RHC, leave for judicial review of the workout proposal prepared by the SAs of the company;

(ii) under O 53 r 3(2), a stay of the implementation of the workout proposal until the adjudication of this judicial review; and

(iii) costs to be borne by the respondents (the appellants in this appeal).

[14] On 25 June 2003, the respondents' application was dismissed with costs by the High Court.

[15] On appeal to the Court of Appeal against the said decision the Court of Appeal by a majority decision allowed the respondents' appeal on 24 October 2005.

[16] Hence the present appeal to this court.

FINDINGS OF THE HIGH COURT

[17] At the High Court, the application was heard by Low Hop Bing J, who allowed the appellants to be heard on the respondents' ex parte application for leave. Neither appellant filed any affidavits or introduced any new facts on the respondents' application for leave. Instead only written submissions were filed and the respondents did not object to the appellants taking part in the proceedings.

[18] The learned judge, in dismissing the ex parte application, held inter alia that the workout proposal does not come within the purview of the decision of a 'public authority' in O 53 r.2(4), but concerns commercial transactions made by persons and bodies who are private entities.

[19] The learned judge also held that the infusion of public element and public interest in the Act does not ipso facto make the workout proposal a decision of a public authority.

DECISION OF THE COURT OF APPEAL

[20] Upon appeal by the respondents to the Court of Appeal, the appeal was allowed by a majority decision. The order of the High Court was set aside and an order in terms of the ex parte motion for leave was granted.

[21] The Court of Appeal (majority decision) held that the High Court should not go into the merits of the case at leave stage. Its role is only to see if the application is frivolous eg where the applicant is a busybody or the application is made out of time or against a person or body that is immunised from being impleaded in legal proceedings or if the subject matter of the review is one by settled law non justiciable.

[22] The Court of Appeal (majority decision) rejected the senior federal counsel's submission that the Supreme Court case of *Tuan Hj Sarip Hamid & Anor v Patco Malaysia Bhd* [1995] 2 MLJ 442 had set a different and a higher test than that stated in *Mohamed Nordin bin Johan v Attorney General, Malaysia* [1983] 1 MLJ 68 and *JP Berthelsen v Director General of Immigration, Malaysia & Ors* [1987] 1 MLJ 134 and held that a frivolous case is the same thing as a non arguable case.

[23] Having decided that the High Court had erred in going into the 'merits of the application' at leave stage the Court of Appeal (majority decision) itself went further to consider the 'merits of the application' ie whether the appellant ('Danaharta') is in fact amenable to judicial review.

[24] Relying on Indian authorities, the Court of Appeal (majority decision) held that Danaharta was amenable to judicial review. It held that although it is a company incorporated under the Companies Act, it is wholly financed by public funds, is directly and indirectly under the control of the Minister of Finance and has powers conferred by the Act.

THE APPEAL BEFORE US

[25] At the outset of the appeal before us we took the view that of all the three questions posed for our determination Question 3 is the most relevant and important question to be addressed. Once that is done there is no necessity for us to answer Questions 1 and 2.

[26] We intimated to the parties that for the purpose of this appeal we would only consider Question 3. Parties agreed and we invited counsel to make their submissions on Question 3 only.

[27] Question 3 reads thus:

> Does section 72 of the Pengurusan Danaharta Nasional Berhad Act 1998 (the Act) oust the jurisdiction of the courts to entertain an application for judicial review?

[28] For ease of reference we reproduce s 72 of the Act as follows:

> Limits on the grant of orders of court.
>
> 72 Notwithstanding any law, an order of a court cannot be granted –
>
> (a) which stays, restrains or affects the powers of the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this Act;
>
> (b) which stays, restrains or affects any action taken, or proposed to be taken, by the Corporation, Oversight Committee, Special Administrator or Independent Advisor under this Act;
>
> (c) which compels the Corporation, Oversight Committee, Special Administrator or Independent Advisor to do or perform any act,
>
> and any such order, if granted, shall be void and unenforceable and shall not be the subject of any process of execution whether for the purpose of compelling obedience of the order or otherwise.

[29] In arguing the appeals before us Cik Jeyanthini Kannaperan, learned counsel for Danaharta, and Dato' Mary Lim Thiam Suan, learned senior federal counsel appearing for the Attorney General, took a common stand.

[30] In essence it was contended that s 72 of the Act prohibits an order of court which stays, restrains or affects the powers and any action taken or proposed to be taken by Danaharta, the special administrators or independent advisors under the Act.

[31] It was further contended that the order of the Court of Appeal (majority decision) granting the respondents leave to issue an application for certiorari to quash the workout proposal, all actions taken and documents prepared in relation to the workout proposal including approval of the workout proposal by the secured creditors of the company coupled with a stay under O 53 r 3 runs contrary to s 72.

[32] On the other hand, Encik Lim Whei Chun, learned counsel for the respondents in opposing the appeal submitted that s 72 was never intended and understood as something to oust the court's judicial-review jurisdiction.

[33] It was only intended to bar the granting of injunctions by the court against Danaharta. This is supported by the decision of the Federal Court in *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd* [2004] 2 MLJ 257.

[34] Referring to the case of*South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union* [1981] AC 363 it was further contended by learned counsel that the word 'quashed' is ordinarily used to describe the result of an order of certiorari. Sections 22(4), 25A(3) and 41(7) of the Act where the term 'quashed' is employed reveals the understanding that certain entities under the Act are susceptible to certiorari. Had s 72 attempted also to oust certiorari, then s 72 would probably have deployed the same strategy of using the phrase 'shall not be …. quashed.' Thus the absence of mention of even the word 'quash' is a textual indication that s 72 does not include the ousting of certiorari.

[35] In attempting to answer the question posed we would state from the outset that the Act is a special law specifically enacted to meet an economic exigency. It was passed in the public interest and for the public good. It is not out of place for the courts to take judicial notice of the financial crisis that the world underwent in the dying years of the last century.

[36] To understand better the special position accorded to Danaharta, it is appropriate for us to refer to the preamble of the Act which reads as follows:

> An Act to provide special laws for the acquisition, management, financing and disposition of assets and liabilities by the Corporation, the appointment of special administrators with powers to administer and manage persons whose assets or liabilities have been acquired by the Corporation and for matters connected therewith or incidental thereto.
>
> WHEREAS …
>
> AND WHEREAS legislation is the only means by which the acquisition, management, financing of assets... can be implemented promptly, efficiently... for the public good:
>
> AND WHEREAS legislation is the only means by which special administrators may be appointed... to administer and manage persons whose assets... have been so acquired:
>
> AND WHEREAS Pengurusan Danaharta Nasional Berhad has been established as a corporation incorporated under the Companies Act 1965 for such purposes.

[37] The object of the Act was explained in clearer terms in the speech delivered by the then Minister of Finance in Parliament while introducing the Bill for the Act. The material parts of it (in the original text) read as follows:

> … suatu akta untuk memberi kuasa kepada Pengurusan Danaharta Nasional Berhad untuk mengambil alih pinjaman-pinjaman … seterusnya menguruskan pinjaman dan aset serta melaksanakan rancangan menyusun semula aset-aset ….
>
> Dengan itu kerajaan telah memutuskan untuk menubuhkan sebuah syarikat yang dikenali sebagai Pengurusan Danaharta Nasional Berhad … untuk mendapatkan kembali pembayaran ke atas hutang-hutang tersebut.
>
> ...
>
> Untuk berjaya mencapai objektifnya Danaharta perlu berupaya mengurus dan menyelesaikan …. Dengan itu syarikat ini tidak boleh beroperasi seperti syarikat biasa dan dikongkong oleh peraturan dan perundangan transaksi perniagaan. Untuk tujuan ini, Danaharta akan ditubuhkan sebagai sebuah syarikat berkanun yang diperbadankan di bawah Akta Syarikat 1965 dengan kuasa-kuasa yang akan diberikan oleh sebuah akta Parlimen. Status sebagai sebuah syarikat berkanun akan memberi Danaharta … kuasa undang-undang yang khusus bagi memenuhi objektifnya.
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> ...
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> Justeru itu adalah difikirkan wajar kerajaan menggubal sebuah rang undang-undang dengan memberi kuasa-kuasa tertentu kepada Danaharta untuk melaksanakan tugas dan tanggungjawabnya....

[38] The constitutionality of s 72 became the subject matter for determination by the Federal Court in *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, intervener)* [2004] 2 MLJ 257.

[39] In that case the respondent ('Kekatong") was the registered proprietor of certain lands. These lands were charged by way of a third party charge to a bank, which had availed facilities to a borrower. The borrower had defaulted and judgment was entered against him. The bank commenced foreclosure proceedings and obtained an order for sale, which was subsequently, on appeal, set aside. Upon the implementation of the Act, the bank sold the loan and the securities to the respondent ('Danaharta'), in whom, pursuant to the provisions of the Act, the land vested. Kekatong applied to the High Court seeking to restrain Danaharta from exercising any rights under the Act or under the vesting order and with particular regard to s 57 of the Act and para 5 of the 15th Schedule to the National Land Code ('NLC'). The High Court refused the injunction on the basis that there were no serious questions to be tried and in any event it had no jurisdiction to grant an injunction by reason of s 72 of the Act. Kekatong appealed to the Court of Appeal. The Court of Appeal held that s 72 is unconstitutional as it contravened art 8 of the Federal Constitution. The appellant appealed to the Federal Court and the issue for consideration was whether s 72 is unconstitutional.

[40] It was unanimously held by the Federal Court that there was a rational basis between the classification in s 72 and its object in relation to the Act. Section 72 therefore satisfied the requirements of the reasonable classification test and is not unconstitutional.

[41] In its judgment at p 286 this is what the court said: A

> As the Act itself indicates its object in the preamble and the basis of the classification is evident from the language of s 72 it falls within the first category as classified in *Shri Ram Krishna Dalmia & Ors v Shri Justice SR Tendolkar & Ors* AIR 158 SC 538. It is clear that the Act was required in the public interest to promote the revitalization of the nation's economy. Denial of injunctive relief is absolutely necessary to ensure that the object of the Act is not frustrated. That clearly is the purpose of s 72 which applies to all persons in the same position as the respondent. Thus, it applies equally to all persons who are similarly circumstanced. This is a reference to all persons whose assets and liabilities have been acquired by the appellant: pursuant to the Act. B

C

[42] Section 17A of the Interpretation Acts 1948 and 1967 (Act 388) provides:

> 17 A. In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object. D

[43] The provision of s 17A above is what is normally referred to as the 'purposive approach' in statutory interpretation. The same approach was adopted by the Federal Court in *DYTM Tengku Idris Shah Ibni Almarhum Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Chan Teik Huat* [2002] 2 MLJ 11; *Lau Kong Co Ltd v Thong Guan Co Pte Ltd* [2004] 4 MLJ 1 and *Hokkien Cemeteries, Penang v Majlis Bandaran Pulau Pinang* [1979] 2 MLJ 121. E

[44] The object of Parliament in enacting this law has been clearly stated in the preamble to the Act. The Act was required in the public interest to promote the revitalization of the nation's economy. It was against this background that the Act was passed by Parliament in July 1998. We find the purpose is clear and unambiguous. F

[45] In this regard, a knowledge of the matters considered by the legislature in enacting this law is relevant. Further, it is permissible for the courts, as held by the Federal Court in *Chor Phaik Har v Farlin Properties Sdn Bhd* [1994] 3 MLJ 345 to resort to the *Hansard* as an aid to interpretation. We can therefore refer to the policy speech of the then Minister of Finance in Parliament while introducing the Bill to the Act (see para 37 above). G H

[46] In the case of *Tan Sri Dato' Tajuddin Ramli v Pengurusan Danaharta Nasional Bhd & Ors* [2002] 5 MLJ 720 the provision of s 72 was also considered. In refusing an application for an injunction the learned judge, Vincent Ng J, commented (at pp 741–742): I

> It is incontrovertible that s.72 constituted a caveat against the granting of a restraining order directed at the courts …. Thus, in the present case, I would hold that this court is precluded by the expressed crystal clear provision in s.72 from granting the injunction or restraining order sought by the plaintiff.

[47] Again, in *Kekatong Sdn Bhd v Bumiputra-Comerce Bank Bhd & Anor* [2002] 6 MLJ 186, Azmel J (as he then was) held as follows (at p 190):

> The wordings of s.72 of the Act are very clear and contain no ambiguity as to its meaning and intention. In the absence of any ambiguity, it is incumbent upon this court to give it its literal meaning.

[48] The same decision was again reflected in the case of *Wong Koon Seng v Rahman Hydraulic Tin Bhd & Ors* [2002] 1 MLJ 98.

[49] Although the above cases dealt with applications for injunction we agree that the principles therein are equally applicable to certiorari and mandamus as s 72 bars not only orders granting injunctions but also certiorari and mandamus as well.

[50] Coming back to the appeal before us we would reiterate that judicial review by way of certiorari is not available by reason of s 72 of the Act.

[51] Section 72 clearly prohibits an order of court which stays, restrains or affects the powers and any action taken or proposed to be taken by Danaharta, the special administrators or independent advisors under the Act.

[52] We agree with the submission of learned counsel for the appellants that the orders of the Court of Appeal granting the respondents leave to issue an application for certiorari to quash the workout proposal, all actions taken and documents prepared in relation to the workout proposal including approval of the workout proposal by the secured creditors of the company, coupled with a stay under O 53 r 3 run contrary to s 72 of the Act.

[53] Following the Federal Court decision in *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd* that s 72 is valid and constitutional and that any order that denies the quick and efficient disposal of property within the framework of the Act is void, it is our unanimous view that the orders of the Court of Appeal run foul of s 72 of the Act and are unsustainable.

CONCLUSION

[54] In the result, we would answer the question posed in the affirmative and allow the appeals with costs.

[55] My learned brothers, Abdul Hamid Mohamad and Abdul Aziz Mohamad FCJJ have seen this judgment in draft and have expressed their agreement with it.

Appeal allowed.

Reported by Sally Kee