

Proceedings of the International Real Estate Research Symposium (IRERS) 2004

Towards Enhancement of Knowledge Partnerships in Real Estate



13 -15 April 2004, Pan Pacific Hotel, Kuala Lumpur, Malaysia



Organised by:



National Institute of Valuation (INSPEN)
Valuation and Property Services Department
Ministry of Finance Malaysia

In collaboration with:



TABLE OF CONTENT**Page**

- | | |
|--|-----|
| • A Bona Fide Purchaser for Valuable Consideration: A special creature under the Malaysia land law
- Dr. Nor Asiah Mohamad | 427 |
| • Predicting Kuala Lumpur House Prices: A Comparison of Multiple Regression Analysis and Artificial Neural Networks
- Rasimah Aripin
- Asmah Mohd. Nasir | 437 |

A Bona Fide Purchaser for Valuable Consideration: A special creature under the Malaysian land law

Dr Nor Asiah Mohamad

Lecturer at Ahmad Ibrahim Kulliyah of Laws,
International Islamic University, Malaysia.

Abstract

Bona fide purchasers seem to have a very comfortable place under the Malaysian land law. The NLC has expressly stated that in case of any conflict of interest between bona fide purchasers and others, the bona fide purchasers shall be given priority. In tackling this issue, the writer will first provide a detail discussion on the point who are the people that fall under the category of bona fide purchaser based on case law. What are the principles or criteria used by the court in their findings. The discussion will include identifying the criteria used by the courts in classifying those persons as bona fide purchaser. Lastly the paper will also highlight the dilemmas and problems arising as a result of some court decisions in giving priority to bona fide purchasers especially under a system where registration is of a paramount consideration. This paper seeks to show that the privilege given to the so called bona fide purchasers, to a certain extent, may develop a conflict of principle under the Malaysian Torrens system.

INTRODUCTION

This article highlights the legal provisions as well the legal decisions relating to bona fide purchaser. The problem revolves around the issue of who is a bona fide purchaser, the criteria of a bona fide purchaser and also the rights of a bona fide purchaser. It is observed that those questions are not well answered even by the statutes or the courts. Thus, this paper attempts to identify the approach used by the courts in resolving the issues. In addition to that, the paper will also look at the problems arising from the application of bona fide principles in land matters. The discussion is divided into several important areas in which the issue of bona fide purchaser seems to be relevant.

Legal provision governing bona fide purchaser

The National Land Code 1965 (the NLC) contains an express provision emphasizing the concept of indefeasibility of title obtained by a person who can show to the court that he is a bona fide

purchaser. However, one needs to understand the whole section of 340 of the NLC before he can read other provisions or other statute dealing with bona fide purchaser.

Section 340 reads as follows:

- (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
- (2) The title or interest of any such person or body shall not be indefeasible-
 - (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
 - (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2)

(a) it shall be liable to be aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout be liable to be set aside in the hand of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent-

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law.

This provision declares indefeasible any transaction or dealings executed, entered and registered according to the provisions of the NLC. It means that once an interest or a title is registered, it cannot be challenged in any court of law unless if it is commenced based on any of the circumstances laid down by section 340(2). Thus, any title gained through fraud, forgery, misrepresentation or void or insufficient instrument becomes defeasible. The law in referring to bona fide has used the word purchaser in good faith. Thus, this article will synonymously employ the purchaser in good faith as bona fide purchaser.

Who is a bona fide Purchaser

It could be seen that section 340 proposes several criteria as to who is a bona fide purchaser. Firstly, it proposes that one must be a purchaser of property in good faith and for valuable consideration. In *Ong Ban Chai & Ors v Seah Siang Mong*¹, the Court of Appeal viewed that good faith connotes bona fide which means absence of fraud, deceit and dishonesty². Further the Court of Appeal in *Tg Abdullah Ibni Almarhum Sultan Abu Bakar v Mohd Latif b Shah Mohd*³ said that:

Where a transaction is tainted by undue influence, then it is invalid as between the parties thereto and their privies. It is also invalid against any person who seeks to enforce the transaction with knowledge or notice, actual or constructive, that it was procured by undue influence or any other vitiating element. A third party may safely take under such a transaction and enforce it if, he is a bona fide purchaser (as opposed to a volunteer) for value without notice (actual or constructive) of the invalidating circumstances.

Therefore it is suggested that the common characteristics of a bona fide purchaser may include:

- i. absence of fraud
- ii. absence of deceit or dishonesty
- iii. absence of undue influence
- iv. a contract which was entered in good faith for valuable consideration

It is uncertain whether good faith and valuable consideration should be read conjunctively or disjunctively. The academics and the decisions of the courts seem to use the two words in one package. Thus, it is proposed that a person who wishes to claim himself as bona fide purchaser must show that he has bought the property at a reasonable market price. The question is, if the transferee or the acquirer is a volunteer or a purchaser who did not give adequate consideration; is the court willing to recognize them as providing valuable consideration? The answer is probably covered by the court decision in *Affluent Fright*

*Sdn Bhd v Summati Appukuttan Pillai*⁴ in which the court held as the applicant failed to show to the court that he had given valuable consideration, thus, could not be considered as a bona fide purchaser? This policy might help in reducing attempts by the bankrupt to transfer his properties to his relative without any consideration for the purpose of avoiding the legal proceedings against him. Under the Bankruptcy Act 1967, valuable consideration is defined as a consideration of fair and reasonable money value in relation to the value of the property conveyed, assigned or transferred or the known or reasonably anticipated benefits of the contract, dealing or transaction.⁵ Thus, it could be seen that the Act proposes that valuable consideration requires equal or if not a reasonable consideration from the purchaser.

Another relevant criteria of a bona fide purchaser is whether he is a purchaser who has paid the full purchase price. This issue was discussed in *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal*⁶. Gopal Sri Ram JCA laid down a proposition that one

"is not a bona fide purchaser until one has paid all one's money under the contract for sale. A person who pays only a deposit and, under the terms of a written or oral contract agrees to pay the balance later (in the present case after three months), is not a bona fide purchaser."

In *Doshi v Yeoh Tiong Lay*⁷, Gill CJ (Malaya) (as he then was) delivering the judgment of the court held that the respondent there could not be said that he was not a purchaser for value because he had paid only 10% of the purchase price. The learned Chief Justice said: that the respondent cannot claim to be a purchaser for value without notice because he had not paid the full purchase price.⁸ The authority relied on for this assertion is the New Zealand case of *Morland v Hales and Somerville* (1911) 30 NZLR 201 in which it was said that Somerville could not claim as purchaser for value without notice, as his contract had not yet been completed by payment of the purchase price and the conveyance of the legal estate. But here the legal estate was conveyed to the respondent by an instrument of transfer which was duly

registered. It is true that he paid only 10% of the purchase price in cash, but he executed a charge on the property to secure payment of the balance of the purchase price. It is suggested that it is not correct to say that he is not a purchaser for value. Therefore, this case emphasizes that the term of payment is not the only way of determining whether a purchaser or a registered proprietor is a bona fide or not. Instead, as it appeared in *Morland's* case the evidence of mortgage as a way to settle the payment is good enough to substantiate the purchaser argument that he acquired the property in good faith.

In *M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor*⁹, the first appellant company was the successful purchaser at a public auction sale. It paid 25% of the purchase price but failed to pay into court the balance within the stipulated period of 30 days. Thus, the purchaser cannot be said to be a bona fide purchaser. This principle is also upheld in *Komplek Keawangan Malaysia v Mukti b Hj Mahamood and Anor*¹⁰. The intervener paid only 10% of the purchase price and settled the balance of the purchase within the time frame but after the application to set aside the sale was served on him. It was held that since the intervener has settled the balance within the time frame given to him, he should be considered as bona fide purchaser.

We found that the common factor in all bona fide transactions is the absence of fraud, deceit or dishonesty. In other words, they are entered into in 'good faith' for valuable consideration. The expression 'good faith' in English is used synonymously with the Latin expression 'bona fide'. Besides that, it could be seen that the scope of bona fide purchaser may vary depending on the context in which it is used. Thus, in the context of 'a purchaser', the amount of payment may also determine the element of 'bona fide'. Therefore, it is proposed that the meaning or the scope of bona fide is not exhaustive.

How to prove bona fide purchaser

The earlier discussion concerns about who is a bona fide purchaser. This paragraph deals with

how to prove that a purchaser is bona fide in his transaction. There are two main questions to be answered. Are you a purchaser in good faith? So what constitutes good faith? Since this issue relates to a purchaser, it is submitted that the first element to qualify as a good faith purchaser is a purchaser who has paid full the purchase price. However in respect of a purchaser in an auction sale, he must show that he is a purchaser who has paid within the time frame given by the law.

The second element is notice. I submit here that the element of notice is not settled in Malaysia. The NLC is silent on this point while the courts propose different views based on different reasons. However, a reference could be made to the Bankruptcy Act 1967 which states that "notice" includes knowledge of an act of bankruptcy or any bankruptcy proceedings or of facts sufficient to indicate to the person dealing with the debtor the commission of an act of bankruptcy.¹¹ The issue of "notice" is important to determine whether a person is a bona fide purchaser or not. Although the land registration system purports to ignore knowledge or notice of the purchaser of any adverse claim, the courts in some cases viewed that knowledge or notice may constitute fraud thus would invalidate the indefeasibility of title of the 'registered purchaser for the time being'. In other words, the bona fide purchaser's title is defeasible if it is found that the acquirer has 'notice' of the earlier interest in the land or property. However, if we were to agree that notice is immaterial, thus, the bona fide purchaser has the advantage. What is the best stand? To answer this question, it is best to find the answer to the next question that is whether knowledge or notice of the adverse claim may defeat the 'good faith' of the 'registered purchaser for the time being'? What is the benchmark in determining whether a party is exercising his right in 'good faith'? It is submitted that notice or knowledge of the 'purchaser for the time being' of any adverse claim should be taken into account in determining whether a purchaser is a bona fide or not. However, in interpreting 'notice' it is suggested that the application should only be confined to 'actual notice' and not constructive notice. In many cases, it was discussed that fraud must be actual fraud¹² which

also means that mere knowledge or notice of any adverse claim or an earlier interest may not affect the meaning of good faith under section 340(3).

In *Waimiha Sawmilling Company Ltd v Waione Timber Company Ltd*¹³ the Privy Council held that a registered proprietor who took a transfer with actual knowledge of an existing adverse claim against his transferor, acquired an indefeasible title as his mere knowledge of the existence of the adverse claim did not amount to fraud. Lord Buckmaster stated:-

"If the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent, and so also fraud may be established by a deliberate and dishonest trick causing an interest not to be registered and thus fraudulently keeping the register clear ..."

What is the position of a bona fide purchaser under section 340 of the NLC?

It is suggested that section 340 should be read as a whole in order to avoid any misconception. In *Boonsom Boonyanit v Adorna Properties Sdn Bhd*¹⁴, the Court of Appeal gave their opinion as follows:

First, we are of the opinion that the proper approach to interpret s 340 of the Code as a whole, uninfluenced by any judicial or academic comment upon its effect.

A plain reading of the provision suggests two different views. Firstly, section 340(2)(a) suggests that a purchaser who acquired an interest or a title and registered it under his name but later it is challenged that the title was acquired by means of fraud or misrepresentation of which he is a party or privy to it, such title becomes defeasible. However, if it is found that he is not privy or a party to fraud or misrepresentation, his title or interest is indefeasible. Thus, in the case where the holder of the title claims to be a bona fide purchaser, such title would give him an indefeasible title.

Secondly, if the party acquired his title by virtue of s 340 (2)(b) i.e through forgery or by means of

insufficient or void instrument, he also does not have an indefeasible title. This provision is generally used by those who argue that Malaysia adopts a deferred indefeasibility of title. Thus, this provision seems to ignore the question whether the purchaser or the transferee is the bona fide purchaser or not. The law will automatically consider the title as defeasible unless and until the title is passed to a third party who is a bona fide purchaser. The same principle is also applicable to those acquiring their title by unlawfully acquired power or authority.

It is submitted that section 340(3) refers to a third party purchaser or subsequent transferee while sub section (2) is confined to an immediate transferee. In line with this submission it could be said that if the title or interest is proven to have been acquired by the circumstances under sub-section (2) above, any third party purchaser or subsequent transferee may not acquiring an indefeasible title by virtue of that provision.

However, the immediate indefeasibility proponent would argue that section 340(2) and (3) applies to bona fide purchaser irrespective of whether he is an immediate transferee or a subsequent transferee. His title becomes immediately indefeasible by virtue of the proviso under section 340(3). It is also immaterial whether he acquired the title under sub-section (2) or sub section (3).

The crux of the issue is the proviso of sub section (3) which clearly states that if the purchaser can show that he is a bona fide purchaser for valuable consideration he will get an indefeasible title. The question is whether this proviso is applicable to all cases that fall under sub section 2 or to cases covered by sub section 3 only.

If the proviso applies to sub sec. 2, the effect would be that if an acquirer can show that he is a bona fide purchaser irrespective of whether he has knowledge of the previous transaction or not, he should be recognized as the registered owner of the title or interest. This principle was upheld by the Federal Court in of *Boonsoom Boonyanit*.¹⁵ Furthermore, this proviso was highlighted in several academic writings after the

three tier court made an effort to discuss the effect of section 340 of the NLC in *Boonsoom Bonyanit v Adorna Properties*.¹⁶ The facts of this case are worth mentioning. The respondent (Boonsoom) claimed that her title to a piece of land in Penang was forged and as a result her land was sold and transferred to the appellant. (Adorna) The appellant claimed that he had no knowledge of that transfer and the documents were forged by someone who was not the true owner. The High Court had interpreted the proviso under sub sec. 3 of the s 340 of the NLC as giving an immediate effect to the purchaser who is bona fide for valuable consideration. One of the grounds of judgement given was that it is necessary for the economic well being of the nation to retain confidence of prospective innocent purchasers of landed property.

The plaintiff then appealed to the Court of Appeal and the court had the opportunity to consider and decide whether indefeasibility under s 340(2) is deferred or immediate. Delivering the judgment of the court, Gopal Sri Ram JCA at p 84 said:

First, we are of the opinion that the proper approach is to interpret s 340 of the NLC as a whole, uninfluenced by any judicial or academic comment upon its effect. When read as a whole, the section makes it clear that, save in the limited cases enumerated in its second subsection, the title of a registered proprietor shall be indefeasible; that is to say, that it cannot be impeached. But such title, in the words of the legislature, 'shall not be indefeasible' in each of the instances set out in the second subsection to s 340. This means that in each situation envisaged by the NLC under s 340(2), the title of a registered proprietor shall be defeated or, in other words, liable to be set aside. On s 340(3), at p 85 his Lordship said as follows: It follows from what we have said in the preceding paragraph - and this is the fourth reason we advance for disagreeing with the learned judge - that s 340 is constructed in such a fashion as to make defeasible only the title of the immediate acquirer of land. The section, however, protects a purchaser who, in good faith and for

valuable consideration, acquires title to land. It also protects the successors in title of such a purchaser. In our judgment, the words 'any purchaser' appearing in the proviso to s 340(3) do not include a registered proprietor whose immediate title is rendered defeasible by one or more of the vitiating elements specified in the second subsection to s 340 of the NLC. Any other construction would, in our view, denude sub-s (2) of all effect. The section should be read as making defeasible the title of a proprietor who gets onto the register by means of one or more of the methods specified in the second subsection. However, if such a registered proprietor were to dispose of the land to a third party who, in good faith, pays the purchase price, then, the latter, as well as all those who come into the register after him, take title free of any taint.

At the Federal Court, the judges agreed with the judgement of the High Court and upheld the immediate indefeasibility principle.

Previously, although the issue whether the Malaysian land system adopts deferred indefeasibility or immediate indefeasibility seems not be so indispensable, it was generally believed that Malaysia has adopted deferred indefeasibility.¹⁷ Nevertheless, the difference of the two seems to be significant nowadays. It suggests that the title is indefeasible so long as there is no challenge disputing or claiming that his title is tainted by the elements under section 340(2). The indefeasibility will take effect from the moment you register your title. It is commonly accepted that if the purchaser has knowledge of the previous transaction or ought to have such knowledge but he managed to have the title registered under his name, then section 340(1) does not apply to him. Thus, if the immediate indefeasibility is acceptable, notice or knowledge is no more an issue for that matter.

Furthermore, the above proviso also states that as long as you can prove that you are a purchaser in good faith, has no knowledge of the previous transaction, your title is indefeasible.

In this respect, I am agree with Gopal Sri Ram's decision at the Court of Appeal but perhaps with different emphasis. Although I am very much in support the opinion that a bona fide purchaser for valuable consideration should be given priority in any land dealings and registration, I also believe that the original owner whose title was hijacked or replaced by a new owner should be given special consideration as well. Unfortunately, the NLC, despite emphasizing on the effect of registration and guaranteeing the registered owner, it only gives preference to the *owner for the time being registered*. (emphasis is mine) It is sad to know that the moment another person manages to register his name in the registration book, your title become pointless and of no effect. To let the original owner suffers loss as compared to the new owner who is an immediate purchaser seems to be unfair. The decision in *Boonsoom Boonyanit* seems to put a heavier burden to the original owner to take care of his property rather than to a potential buyer who is interested to buy another person's property. Thus, although the new owner might be a bona fide purchaser, it is submitted that a heavy duty should be put on the potential buyer and his lawyer to conduct a search before concluding to buy a property. Or else, he must be prepared to receive back his money as a result of his transaction found to be void or defeasible for certain reasons. This policy of giving priority to the original owner would also make the potential buyer to be more careful in dealing with a seller or through the agent.

In one of his articles, PK Nathan puts his view that it is common sense and trite law that an immediate purchaser cannot obtain good title from an imposter, impersonator or forger.¹⁸ According to him, it is very important to stress that a forger cannot pass title and more so by using a fraudulently procured document of title so that even a subsequent innocent purchaser does not get any good title. Based on this argument he disagreed with the High Court and the Federal Courts' judgement in *Boonsoom Boonyanit*

Circumstances involving bona fide purchasers in land matters

The decisions of the High Court¹⁹ and the

Federal Court in *Adorna Properties Sdn Bhd v Boonsoom Boonyanit*,²⁰ have given a big recognition to the bona fide purchaser and in contrast, it has placed the registered owners in a worry and unsecure situation. In this case, the land owners may safely kept their land titles in their custody, nevertheless, the titles are actually belong to another person in the land office.²¹ By this decision, although the change of ownership was acquired through fraud or forgery, if the acquirer is a bona fide purchaser for value without notice of fraud or forgery, the bona fide purchaser will get a good title. What is left for the original owner is only a right to sue the forger or the impersonator in *personam*.

Unlike the above, the issue as to the rights of an innocent purchaser for value, with or without notice of the charge as against a registered chargee has been considered by the Courts and is now settled law. The majority of the cases upheld that the registered chargee has a better right than the bona fide purchaser unless it is proven that the transaction of the registered charge is tainted with the circumstances under s 340 (2) thus the registered chargee's title becomes defeasible.²²

In *Perwira Habib Bank v Oon Seng Development*²³, the purchasers bought a few housing lots and they were acknowledged that their lands were subject to a charge. The purchasers had paid full purchase price of their units. As a result of the failure on the part of the registered chargor to service the loan to the bank, the bank took foreclosure proceeding and the Order for Sale was granted to the registered chargee i.e the bank. The lawyers for the purchasers argued that their clients being a purchaser who had paid the full purchase price are bona fide purchasers so the OFS should not be granted in respect of their lots. It was held that as bona fide purchasers for value, their rights could not prevail over the right of a registered chargee. In *Tai Lee Finance Co Sdn Bhd v Official Assignee & Ors*²⁴ and also in *Perwira Habib Bank (M) Bhd v Bank Bumiputra (M) Bhd*²⁵ it was held that the interest of a registered chargee is indefeasible by s 340(1) of the NLC unless it is made defeasible by s. 340(2).

In contrast to the above there were also attempts to give priority to the bona fide purchaser for valuable consideration. For example in *Keng Soon Finance Bhd v MK Retnam Holdings Sdn Bhd & Anor*²⁶ Lord Oliver said that even assuming - a point which does not arise in the instant case and has not been argued - that this (section 340) might not protect a purchaser or chargee acquiring title with actual notice of the equitable interest of a purchaser, their Lordships are quite unable to see how the interest of a purchaser who has expressly consented to the creation of the chargee's interest could prevail over the registered title. Nor, in their Lordships' opinion, could it furnish 'a cause to the contrary' for the purposes of section 256(3).

Therefore it may be seen that the indefeasibility of the chargee's interest is not affected by the chargor's conduct, however unconscionable or deceitful it may be, unless it can be shown that there was collusion between the chargor and the chargee to defeat the interest of a third party. The interest of a *bona fide* purchaser for value cannot prevail over that of a registered chargee.

The position of bona fide purchaser is also relevant under sec 380 of the NLC. The section does not directly mention the position of bona fide purchaser, but what is the position of bona fide purchaser if there is a mistake done by the land registrar which affects the purchaser's right? Can he claim immunity against any rectification? In this respect, Wong suggested that the answer should be made in consideration of what is best one common sense, proposing that such a mistake should be able to be corrected though it may involve a third party purchaser.²⁷

Another relevant provision under the NLC is section 349 which provides for registration of vesting of land to the Official Assignee. It is commonly believed that until registration of the Official Assignee, it is possible for the bankrupt to deal with the title or interest in the land in respect of which he is a registered owner. Thus, if the property is transferred to a bona fide purchaser for value therefore the title is also indefeasible. In this regard, Section 53 (B) (3) of the Bankruptcy

Act 1967 has clearly declared the indefeasibility of title of a subsequent purchaser if he can show that he has acquired the property in good faith and for valuable consideration. In *Re Chua Tui Hong Ex Parte Castrol (M) Sdn Bhd*²⁸, Augustine Paul held that until registration of the Official Assignee, it is possible for the bankrupt to deal with the land or interests in the land in respect of which he is the registered proprietor. He can pass title to a bona fide purchaser for value without notice of the receiving order. If the purchaser succeeds in obtaining the registration of a title, he will probably have an indefeasible title if he is not a party or privy to the bankrupt's fraud. In this respect, he can pass a good title to a bona fide purchaser for value without notice of the receiving order. The same issue concerning priority of a bona fide purchaser and the Official Assignee was also discussed in *Koh Thong Chuan v The Official Assignee of the Property of Koh Liang Hee, Bankrupt*.²⁹

Besides protecting the right of the 'for time being registered proprietor and the chargee, s 340(1) of the NLC also specifically safeguards the interest of the registered lessee or a person having registered easement subject to certain exceptions as indefeasible. Although there are no reported cases for leases or easement, the right of the registered chargee as against bona fide purchaser seems to be settled. It was upheld in the majority of cases that right of the registered chargee prevails as against a bona fide purchaser.³⁰

If you are a bona fide purchaser for valuable consideration, would you be considered as the interested party who is eligible for compensation under the Land Acquisition Act if the land is to be acquired by the authority? Under section 11(1) of the Act, only the occupier of the land; the registered proprietor of the land, where he is not the occupier; a person whose rights or interests are registered in the registration book is traceable through search and a person whom the Land Administrator knows or has reason to believe to be interested in the land will be served with a notice of the inquiry. Therefore, any bona fide purchaser whose right or interest is yet to be registered will become an equitable owner or a

person having equitable interest in the land. These bona fide purchasers may not be called for the inquiry. However, as provided under the Land Acquisition Act 1960, he still has the opportunity to assert as 'persons interested' under s 37 of the Act. In *Magasu Sundram T Magasu & Ors v PTG, WP*³¹, the term "persons interested" was held to be inexhaustive and inconclusive. A person may be said to be a "person interested" if he has an interest in the land, directly or indirectly, or if he has an interest in the compensation to be awarded for the acquired land. On this basis, the Land Acquisition Act has a provision that gives opportunity for any "interested person" to come forward and stating his rights for a just consideration of the Land Administrator. In this case, it is arguable that under the Act, the "interested person" is determined based on the number of persons who may come forward to claim themselves to be a person aggrieved by the acquisition. Based on this, the Land Administrator will hold an inquiry to determine those who are entitled to receive the awards and how much awards deserved by each party. In this respect, again it is noted that a right of a bona fide purchaser for valuable consideration is well taken care of by the law.

Another important provision dealing with bona fide purchaser is s 26(b) of the Specific Relief Act 1950. This provision provides that specific performance of a contract may be enforced against either party thereto or any other person claiming under a party to the contract by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the earlier contract. However, the law puts the burden on the third party to show that he enters the contract in good faith for valuable consideration and without notice of the earlier transaction.

Conclusion

As far as land matters are concerned, the rights of the bona fide purchasers for valuable consideration in land matters are well protected under the law. The NLC 1965 and the Bankruptcy Act 1967 contain clear provisions

providing for the indefeasibility and priority of their rights. The only ground for challenging the indefeasibility of title held by these groups is by asserting that their titles are either tainted by fraud, misrepresentation, undue influence, forgery or void or insufficient document. It is also suggested that such special treatment would, to a certain extent, give confidence to those dealing with this group of people and thus, boost the economic development of the country. It is undeniable that in most cases, the bona fide purchasers involve corporate holders who are the key players in the development while the party who claims to be the original proprietor is always an individual owner whose rights seem insignificant to the nation. Nevertheless, it is a matter of principle. Is prospective right is more important than existing right?

References;

David S. Y Wong. 1971. *Tenure and Land Dealings in the Malay State*. Singapore University Press.

Judith Sihombing. 1997. *The National Land Code: A commentary*. Third Edition. Malayan Law Journal. Kuala Lumpur.

PK Nathan. "Nightmare for registered owners of landed Property". [2002] CLJ xxiii

Sinnadurai, V. 1979. *The Law of Contract in Malaysia and Singapore*. Kuala Lumpur. Oxford University Press.

Syed Ahmad al Sagoff. 2003. *Principles of the Law of Contract in Malaysia*. Second Edn. Kuala Lumpur. Malayan Law Journal.

Wong Muh Rong. 1996. Deferred In defeasibility in Malaysia: a misconception? The views of the Judiciary towards the concept of indefeasibility in Australia and Malaysia. *Current Law Journal*. [1996] 2 clj xxix-lxiii.

- 1 [1998] 3 MLJ 346
- 2 At page 370
- 3 [1996] 2 MLJ 265
- 4 [2001] 8 CLJ 71
- 5 Section 54(2)
- 6 [1995] 2 MLJ 770
- 7 [1975] 1 MLJ 85, this case was referred by the judge in ***Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal***
- 8 Page 88
- 9 [1994]1 MLJ 294
- 10 [1998] 5 MLJ 156
- 11 Section 54(3)
- 12 *Assets Co Ltd v Mere Roihie* [1905] AC 176.; *Teh Guat Choo alias Ting Guet Choo (f) v Cheah Ah Hoe and Yong Pow Meng* [1932] MLJ 109
- 13 [1926] AC 101 at pp106, 107
- 14 At p. 85
- 15 [2001] 2 CLJ 133
- 16 [1995] 4 CLJ 45; [1997] 3 CLJ 17; [2001] 2 CLJ 133
- 17 See Judith Sihombing, . *The National Land Code A Commentary*, Third Edition, [1997] *Malayan Law Journal*.
- 18 PK Nathan, "Nightmare for registered owners of landed Property", [2002] CLJ xxiii
- 19 [1995] 4 CLJ 45

- | | |
|---|--|
| <p>20 [2001]2 CLJ 133</p> <p>21 The latest case was reported in <i>Malay Mail</i>, 30 March 2004 where a 88 years old woman was shocked to find that she was no longer the owner of a piece of two acres of land valued RM3 mil.</p> <p>22 See, <i>Tai Lee Finance Co Sdn Bhd v Official Assignee & Ors</i></p> <p>23 [1990] 1 MLJ 447</p> <p>24 [1983] 3 MLJ 55</p> <p>25 [1988] 3 MLJ 55</p> | <p>26 [1996] 4 CLJ 52 at p 5</p> <p>27 David S. Y Wong, <i>Tenure and Land Dealings in the Malay State</i>, 1971, Singapore University Press, p. 144</p> <p>28 [1997] 3 CLJ Supp 174</p> <p>29 [2003] 1 CLJ 125</p> <p>30 <i>Perwira Habib Bank v Oon Seng Development</i> [1990] 1 MLJ 447; <i>KSM Insuran Bhd v Amanah Chase Merchant Bank</i> [1992] 1 MLJ 649</p> <p>31 [2002] 2 CLJ 422</p> |
|---|--|