



CLJ

# SHARIAH REPORTS

A JOURNAL ON ISLAMIC LAW, BANKING & FINANCE

[2015] 1 SHR  
APRIL - JUNE

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## Land Development In The Light Of The Objectives Of Shariah (Maqasid)

by

Dr. Nor Asiah Mohamad\*

### Abstract

*The main objective of the Shariah is to provide a basis to govern all aspects of Muslim life. The ultimate goal of Shariah is to be a blessing for mankind. This is the primary purpose for which the Prophet Muhammad (SAW) was sent to this world. It is universally accepted that the primary purpose of development is to promote human well-being. In this respect, Islam identifies some of the recognised components for sustainable well-being as among others; the security of life, property and honour, individual freedom, moral as well as material education, marriage, family management and social solidarity, minimisation of corruption, breach of trust, and fraud. It is argued that the emphasis on some elements for human sustainable well-being lacks on spiritual foundation. It is also argued that it may not be possible to promote sustainable development without ensuring adequate satisfaction of all human well-being requirements. In this article, the objectives of Shariah (maqasid Shariah) are addressed as the determining factors, which, if properly understood and translated into practice, would become an important tool in realising sustainable development agenda. It is promoted that a correct understanding of maqasid Shariah provides framework in policies thus help prioritise in decision makings and actions. The method employed in this study were data collection based on primary and secondary sources and views of the Muslim jurists on maqasid, land, land development and management.*

**Keywords:** *Maqasid Shariah, land, sustainable development, Islam, property, management.*

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## Introduction

Land development activities are carried out extensively as well as intensively in almost all parts of the world. Some are well planned developments, while others take place on *ad hoc* basis according to the needs and circumstances. Nowadays, there are various measures to monitor land development which include the environmental assessment, the degradation of soils, the air, and the underground land. Despite the presence of technological invention, there are still many loopholes in the management of land which in many circumstances happen due to lack of integrity and irresponsible acts of those involved. In Islam, similar to other doings, development agenda must take place with awareness on the relationship of man and his Creator. The teaching of Islam stresses on the relationship between man and his God (*hablumminallah*) and the relationship of man with his fellow brothers (*hablumminannas*). Thus, any development must take place with the main objective to seek the blessing of Allah (s.w.t.) and giving benefit to the fellow brothers and other creation. Likewise, all activities should not fall contrary to the teachings of Islam. Moving on the premise and looking into a wider perspective, the agenda of development relates to faith and is considered as *ibadah* (an act of submission to Allah) in any Muslim's life.

## Definition Of Land Development

There is no definite meaning of land development based on the Malaysian statutes dealing with lands and housing in Malaysia. In fact, some literatures differentiate between land development and property development. Byrne and Cadman (1984) defines land development as a process carried out by development agency either on its own or otherwise to fulfil the social and economic *via* land rehabilitation and construction or building refurbishment for the purpose of its own occupation or other party's occupation. The definition of property development can be derived from the Town and Country Planning Act 1976 of Malaysia which defines property development as the carrying out of any building, engineering, mining, industrial or other similar operations in, on, over or under land, or the making of any material change in the use of any buildings or other land, or the subdivision or amalgamation of lands. In addition, Cadman and Topping encapsulates property development as a process that involves changing or intensifying the use of land to produce buildings for occupation. It is an exciting, at times frustrating, complex activity

involving the use of scarce resources. It is a high-risk activity which often involves large sums of money tied up in the production process, providing a product which is relatively indivisible. The authors argues that the performances of the economy, at both national and local levels, directly influence the process (Cadman and Topping (1:1995)).

Pilcher Report (HMSO Report, 1975) states that 'development' comprises the following aspects:

- (i) Perception and estimation on demand for various categories of new building;
- (ii) Identifying and ensuring safety of site before building is built on it to meet the demand;
- (iii) Designing accommodation to meet the demand for the identified site;
- (iv) Long term or short term financing to fund the acquisition of and construction on the site;
- (v) Design management and construction; and
- (vi) Leasing out and management of completed building.

The above view suggests that land development refers to any process of changes from the original state of the land to a better state that contributes positively to the community as a whole. While the concept confines the discussion on the development of building, the scope of discussion is wider under the Malaysian land law. The concept of land as outlined under s. 5(a) - (d) of the National Land Code ('NLC') suggests that apart from the normal physical land and anything that is attached to it forming part of the land, the utilisation and management of water, airspace,<sup>1</sup> underground or land below the surface also contribute to the agendas of land development.<sup>2</sup> In a wider perspective, land includes building built on land and anything forms part of the building and thus, discussion of land development must take into account matters relating to landed and stratified properties. In Malaysia, there are two main Acts dealing with strata properties *ie*, the Strata Titles Act 1985, the Building and Common Property (Maintenance and Management) Act 2007 and the Strata Management Act 2013. In addition, housing development is governed by the Housing Development (Licensing and Control) Act 1966 and the Housing Development (Control and Licensing) Regulations 1989.



The literatures relating to land ownership do not detail out specifically on land or property development.<sup>3</sup> Nevertheless, the general principles governing man action determines that intention and manner of how an act is undertaken including the process of development is carried out as well as its benefit must fit to the *Shariah* requirements (the first *hadith* from *Hadith Forty on Intention*). Islam also provides plenty of resources that lay down basic principles as guidance to perform *ijtihad* or to deduce legal principles in matters that have no clear authorities from the primary sources *ie*, the *al Quran* and the *hadith* (saying) of the Prophet (SAW). For instance, Islam will not tolerate with someone who trespasses to other's land in order to reach and utilise his own land. He can only do such act with clear permission from the owner. The landowner must ensure that the benefit he enjoys also brings positive impact to his community or shall not bring *dharar* (damage) to others directly or indirectly.

#### **Scope Of Land Development From The Legal Perspective In Malaysia**

There are many laws dealing with land development in Malaysia. Under the NLC, generally, land development covers the change of original use of any alienated land subject to its restriction in interest, express conditions and category of land use as opposed to what has been earlier approved by the State Authority upon alienation.<sup>4</sup> Under the NLC, the process of land development involves variation of conditions, restrictions and change of land categories,<sup>5</sup> sub-division of land,<sup>6</sup> partition of land,<sup>7</sup> amalgamation,<sup>8</sup> simultaneous applications for sub-division and variation of conditions, restrictions and categories,<sup>9</sup> and surrender and re-alienation.<sup>10</sup> As earlier mentioned, the scope of land itself is wide and includes land covered by water, the hilly areas, the part of the sea side, the space above the surface of the land, the stratum as well as the contents of the earth.<sup>11</sup>

The scope of land development involves certain processes as prescribed under the NLC and other related laws. Therefore, in cases where a land chosen or acquired for the purpose of development is still in its agriculture status, the conversion (to building or industrial status), sub-division, partition or amalgamation of land, wherever applicable, must be obtained before any actual development can take place. There are situations where the State Authority (refers to the State Executive Councillor: *Cheo Lean How v. Fock Fong Looi*)<sup>12</sup> is required to acquire privately owned land for

development purposes. In this respect, land development begins with the acquisition process which, if mishandled, will cause chaos and injustice to many parties. Hence, there is a need for clear guidelines or code of practices which should be made accessible to the public. The affected parties should be given right to be heard in a proper hearing or should be represented in the due process especially if they can't afford getting legal services.<sup>13</sup>

The provisions on land development in the NLC seem to be in line with the land development as perceived from the perspective of property development (Town and Country Planning Act 1976 (Act 172)). Cadman and Topping (1:1995) describes it as a process that involves changing or intensifying the use of land to produce buildings for occupation. Property development is always regarded as exciting and challenging, but at times frustrating and complex activity involving the use of scarce resources. It is a high risk activity which often involves large sums of money tied up in the production process, providing a product which is relatively indivisible. Furthermore, the performances of the economy, at both national and local levels, directly influence the process and this will require for a better check and balance system *via* public participation or through an unbiased government agency taking charge of the integrity measures and policy.

In Malaysia, it is a common practice that some decisions relating to land development are initiated by the government especially if it is recognised that development of certain lands is not essential in fulfilling certain urban planning policies of the government.<sup>14</sup> In some cases, however, even though the government initiates the development plan which may involve acquisition of private-owned land, the implementation of the actual development is still usually offered to private developers. Thus, there are always queries and objections especially involving the urgency of project as it sometimes overrule private ownership, adequacy of payment of compensation, determination of 'market value', delay in payment of compensation or times to initiate action for objections.<sup>15</sup> Furthermore, public awareness on their roles in land development and land planning is still considered low as compared to some other developed countries.<sup>16</sup>

Besides the NLC, land development agenda also requires compliance and observation of other laws such as the Housing Development Act (Control and Licensing) 1966, the Malay Reservation Enactment for each state, Street, Drainage and

Building Act 1974, Architects Act 1967, Land Conservation Act 1960, Land Acquisition Act 1960, and the Uniform Building By-Laws 1984, to mention a few. The existence of these laws show that land development in Malaysia is closely monitored by the government using various legal mechanisms including laws, rules as well as regulations.<sup>17</sup> The introduction of the laws are always to serve specific purpose and it is certainly to help managing and monitoring the implementation of policies for the betterment of the people. For instance, the NLC was introduced in order to provide a uniformity of land laws applicable throughout Peninsular Malaysia. There are laws which clearly state that fraudulent acts, forgery, and exceeding one's prescribed authority either invalidate the whole transaction or may be considered as an offence.<sup>18</sup> There are also laws governing matters on quality of the environment and sewage or even the development of the highlands,<sup>19</sup> the management and utilisation of underground land and resources<sup>20</sup> as well as laws dealing with the use of the airspace.<sup>21</sup> The laws though sufficient and comprehensive in nature, are always perceived as inadequate or lack of implementation and enforcement. Having stated the above scenario in the Malaysian land development context, the preceding discussions looks at the *Shariah* perspective of land and its development.

### Scope Of The *Maqasid Shariah*

The concept of *maqasid* or the objectives of *Shariah* need to be understood by all Muslims. The importance of the objectives, though seem to be almost equal to one another, but demands a profound understanding for a complete application of the concept. The Muslim jurists have identified five important objectives rank in sequence as follows:<sup>22</sup>

- (i) To uphold the religion;
- (ii) To protect the *nafs* (life);
- (iii) To protect the intellects;
- (iv) To protect progeny (*nasab*); and
- (v) To protect property.

The above five objectives provide guidelines for any policy decision. Islam has placed an infinite value of human life as a manifestation of human dignity. Human dignity is nothing unless divinely guided

through religion or *ad deen*. Therefore, the protection of *ad deen* is always given priority as compared to other aspects as it ensures dignity and value of others once the protection of *ad deen* is materialised. This is in line with the teachings of Islam that *ad deen* is a way of life and not merely rituals. Any person who owns property but has no belief in any religion or lacks in practicing religion may lack of guidance. He may become very successful but may not able to share the benefit with others. Islam concerns with one's life in this world and in the Hereafter. Only those that can give and share will truly satisfy with his life in this world.

### Sustainable Land Development

The word 'sustainable' is popular and becomes a theme of many areas of research. It connotes a process, a system, a way of life that is long live and evergreen and suits the natures. The word 'sustainable' remain pertinent in land development as it promotes a way of life that ensures continuity and balance land utilisation. In line with this objective, there are many principles promoting for moderation, prohibiting *dharar* (damage), waste and call for full utilisation of land and not living land in idle state in Islam. There is a leading principle that a landowner is required to continuously work on his land in order to retain ownership of the land. In fact, it was the practice of the Prophet Muhammad (SAW) and his companions to take back land granted to the individuals who failed to revive their lands. The practice serves as evidence that land must be continuously worked on so that it provides benefit to the owner and others either through the produce or the land taxes. Landowner who fail to utilise his land is actually contributing to wastage and it is sinful in Islam.<sup>23</sup>

Sustainable land development also should be manifested in land policy and practices. It is the duty of the *Imam* or leaders to ensure that the policy on land uses is for the benefit of the future *ummah*. Thus, the alienation of land for private must be balanced with the land that is needed for the public. Islam observes private property and guarantees for exclusive right and enjoyment over his land. Nevertheless, private rights and interests shall not override the interest of the public. In this matter, Islam holds to a similar principle of the common law and equity that private right prevails against public interest. Private rights must be protected, but they must also be balanced against the public interest, for instance, in protecting unique natural areas against land development.



The acquisition of land must be for public purpose and if there is any conflict between public and private rights, public rights must be protected, but they must also be balanced against degradation of private interest. There are many occasions or case laws which show that land owners are always reluctant to depart with their lands even though the reasons for the acquisition is to give way for public purpose development of project, not knowing or being ignorant that land is only a trust from Allah (s.w.t.). The acquiring authority on the other hand is required to pay adequate compensation on what has been worked on the land but not the land *per se*. In Islam, the value of the land does not represent the actual value of the land as the owner is not the real owner of the land. Nevertheless, Islam abhors any act of oppression, unfairness and delay in providing the right of others. In this regard, the authority must make sure that the process of acquisition and the payment of compensation must be done in a reasonable period so that no land owner would feel that his position after the acquisition of his land is worse than before the acquisition.

#### **Land Development Approaches**

Among the important elements of sustainable land development is the concept of moderate development. This has been promoted by Ibn Khaldun.<sup>24</sup> Chapra (2006) has listed the element of model of economic development as proposed by Ibn Khaldun as: (i) the strength of the sovereign (*al-mulk*) does not materialise except through the implementation of the *Shariah*; and (ii) the *Shariah* cannot be implemented except by the sovereign (*al-mulk*). Additionally, (iii) the sovereign cannot gain strength except through the people (*al-rijal*); (iv) the people cannot be sustained except by wealth (*al-mal*); (v) wealth cannot be acquired except through development (*al-imarah*); and (vi) development cannot be attained except through justice (*al-adl*). Ibn Khaldun universalised that (vii) justice is the criterion (*al-mizan*) by which God will evaluate mankind, for which (viii) the sovereign is charged with the responsibility of actualizing (Ibn Khaldun, 1967). Tahir Tsabit<sup>25</sup> pointed out in his study that Ibn Khaldun's theory can be understood to have called for moderate development. It is said that such approaches have had positive effect on both land management and administration as well as on other real estate development and management. In land development, the theory of Ibn Khaldun can contribute to a policy aiming at achieving moderate gross domestic product ('GDP') growth through its land management strategies. Tahir further argues that land

administration system will benefit directly if the advice of Ibn Khaldun's concept of moderate development is applied to the land administration policy, institutional set up, legal framework for land tenure and land use controls and development of land markets and its products.<sup>26</sup>

It is believed that such a system is expected to be fair to all, people centric, transparent, subject to the rule of law, simple and affordable as well as efficient and effective. For the purpose of land development and management, the principle of moderate growth will contribute to moderate exploitation of resources, moderate profit making, and care for the needs of present and future generation of people who are likely to be affected by such practices. Construction and maintenance activities will be driven not by maximum profit making but also care for environment and socio-economic needs of other people, thus promote social responsibility in the society. This does not mean that private sector cannot make more profits. This can happen if the public sector is convinced to have moderate national GDP growth and cash, and financial incentive will be provided for development and management companies as a reward for their compliance with principles of sustainable development.<sup>27</sup>

The key element of the *Quran* from the economic point of view is its emphasis on moderation.<sup>28</sup> In this respect, Islam encourages consumption but subject to certain conditions ('O ye people! eat of what is on earth lawful and good ...')<sup>29</sup> while niggardliness,<sup>30</sup> wastefulness<sup>31</sup> and extravagance<sup>32</sup> are condemned. The desire for a livelihood,<sup>33</sup> for comfort,<sup>34</sup> even for ornament and adornment<sup>35</sup> or protection from future uncertainty<sup>36</sup> in this world is never called evil. Instead, the *Quran* insists that its precepts are the means for achieving success in these things without trading it in for failure in the life in the Hereafter.<sup>37</sup>

Islam obliges people to work and not remain idle. Islam is not a religion that merely permits the Muslims to disperse in the earth and earn their livelihood<sup>38</sup> but also advises the Holy Prophet (SAW) to cut short the morning prayers so that an economic activity is also not hampered.<sup>39</sup> It also allows its followers to do trading even during their journey for *Hajj*.<sup>40</sup> Along with these incentives to earn, it repeatedly asks man to satisfy his wants and demonstrates his prosperity,<sup>41</sup> without going to the extent of ostentatious extravagance. The only line drawn is overspending (*israf*) which is prohibited even in charity.<sup>42</sup>

The *Quran* deals with a number of specific economic issues. Private property is protected.<sup>43</sup> The fulfilment of obligations is commanded<sup>44</sup> and is accompanied by details of contract law (for example, *al Baqarah*, 2: 282-283). There is a prohibition of fraud<sup>45</sup> and a call for the establishment of clear standards of weights and measures.<sup>46</sup>

The *Quran* upholds the principle and sanctity of private property. Any Muslim who followed the explicit rules of the *Quran* could not be denied his property without his consent. The Prophet (SAW) said so explicitly in his farewell pilgrimage:

Nothing shall be legitimate to a Muslim which belongs to a fellow Muslim unless it was given freely and willingly<sup>47</sup>

Islam and its teachings suit the universal nature as well as the human nature. One of the natures of Islam is its spirit that is dynamic and having specific objectives or clear *maqasid*. Anyone who studies about the creation of the earth and the universe as well as the creation of human being will certainly agree and support the idea that this world does not exist by mere chance and for no purpose. This foundation belief is important in land development as it encourages for the maximum utilisation of land (*itqan*) that promotes nature and prioritise the *maslahah* above all other purposes. According to Al 'Izz b Abdu al Salam, Islam is synonym to *maslahah*, ie, to bring benefit or to avoid *dharar* (damage).<sup>48</sup>

### **The Concept Of *Maqasid Shariah***

The common term used in most literatures is that *maqasid* represents *maqasid Shariah*, *maqasid al-Syari'* (Allah) and *maqasid syara'*.<sup>49</sup> It is important to understand that the real value of *maqasid Shariah* lies in the *ijtihad* or *hukm* (injunction) extracted or derived from it.<sup>50</sup> Some jurists are in the opinion that *maqasid* refers to *maslahah* itself, ie, to promote both the benefit in this world as well as in the Hereafter.<sup>51</sup>

It is also a principle in Islam that in the process on carrying out the duties, it is obligatory upon any Muslim to enact any law or determine policy that aims to avoid any *dharar* (damage). This understanding is crucial as there are some quarters in a society who believe that Islam is ritual, thus, any call for compliance to any laws which are not expressly provided in the *al Quran* and *as Sunnah* are considered un-Islamic or carry no spiritual value. In this respect, a correct understanding of the *maqasid Shariah* is

crucial. The common understanding about *maqasid* is referred to the five important foundations *ie*, to protect the religion, life, intellect, progeny and property as discussed above.<sup>52</sup> It is proposed in this article that a proper understanding of the concept of *maqasid* produces better administrative function. It guides in determining the priority which helps disposing of ideas and decision making.

### Classification Of Benefits

There are three main divisions of *maqasid* as categorised by the Muslim jurists. Based on the order of importance, it begins with the essential *masalih*, or *daruriyyat*, followed by the complementary benefits, or *hajiyyat*, and then the embellishment *tahsiniyyat*. This categorisation is divided into three and was initiated by Imam al Haramain followed by al Ghazzali, Al Izz bin Abdul Salam, al Qurafi, Ibn Taimiyyah, Ibn Qayyim and al Shatibi.<sup>53</sup>

#### *The Essentials (al-Dharuriyyat)*

It refers to all the needs that are essential in life in this world and Hereafter. Life will ruin in this world and the Hereafter without these essentials. Following that, it becomes a duty of all to protect and preserve the essentials.

#### *The Needs (al-Hajiyyat)*

It includes the needs for life in this world and the Hereafter. Without it, life becomes incomplete.

#### *The Accessories (al-Tahsiniyyat)*

Among the examples are the custom, the ethics, as well as certain well accepted behaviours. The fulfilling of this element will beautify the main act.

The essential interests are enumerated at five, namely faith, life, lineage, intellect and property. They are regarded as essentials as it is vital for normal order in society as well as to the survival and spiritual well-being of individuals. Thus, it means that their destruction and collapse will cause chaos and ruin the normal order in a society. The *Shariah* seeks to protect and promote these values and validates measures for their preservation and advancement. *Jihad* has thus been validated in order to protect religion, and so is just retaliation (*qisas*) which is designed to protect life.

The *Shariah* takes affirmative and punitive measures to protect and promote the five values. Thus, theft, adultery, cheating and corruption are punishable offences as they pose a threat to the protection of private property, the well-being of the family, and the integrity of human intellect respectively. In an affirmative sense again, but at a different level, the *Shariah* encourages work and trading activities as a mean of livelihood. Islam allows the authority to forfeit land on the ground of breach of any laws or conditions imposed on the land owner. The essential *masalih*, in other words, constitute an all-encompassing subject matters of the *Shariah* as all of its laws are in one way or another related to the protection of these benefits. These benefits are an embodiment, in the meantime, of the primary and overriding objectives of the *Shariah*.

The second class of the interests, known as *hajiyyat*, or complementary interests. These interests are not an independent category. These interests also seek to protect and promote the essential interest. These are defined as benefits, which seek to remove severity and hardship that do not pose a threat to the very survival of normal order. A great deal of the concessions (*rukhsah*) such as the shortening of *salah*, and opening of the fast for the sick and the traveller, which the *Shariah* has granted, are aimed at preventing hardship, but they are not essential since people can live without them if they had to. Similarly, in the area of criminal law, the *hadith* which proclaims that 'prescribed penalties are suspended in all cases of doubt' protects a secondary interest in that it regulates the manner in which punishments are enforced. These punishments are in turn designed to protect the essential interests through judicial action. In the sphere of *muamalat*, the *Shariah* validated certain contracts, such as the sale of *salam*, and also that of lease and hire (*ijarah*) because of the people's need for them notwithstanding a certain anomaly that is attendant in both.

The second category of *maslahah* may be elevated to the rank of the essential *maslahah* when it concerns the interest of the public at large. For example, the validity of *ijarah* may be of secondary importance to an individual but it is an essential interest for the society at large. Certain concessions (*rukhsah*) which are granted in the sphere of *ibadah* may be secondary to the survival of an individual but become one of the matters of primary interests for the community as a whole. In the event of a conflict arising between the various classes of interest, the lesser of these may be



provide a park or kindergarten may only be complementary and desirable. From this analysis, it also appears that classifying a certain interest and *maslahah* under one or the other of these categories is likely to be relative and involve value judgment and reasonable discretion of the government.

In guiding this value judgment, a formula from Shatibi who has developed five methods of priorities may be helpful.<sup>54</sup> According to al Shatibi, the essentials will provide a basis for other priorities and the absence of the essentials shall ruin all that are needed. But, if the necessary or accessory is absent, the things can still function. The Muslim jurists rule that it is still obligatory for the Muslims to ensure the necessary and the accessory are well available and be made possible so that the essentials can work well.

In his book, Hashim Kamali shares the view of Shatibi that induction (*istiqra'*) is one of the most important methods of identifying the *maqasid* of the *Shariah*. There may be various textual references to a subject, none of which may be in the nature of a decisive injunction. Yet their collective weight is such that it leaves little doubt as to the meaning that is obtained from them. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions. Shatibi illustrates this by saying that nowhere in the *Quran* is there a specific declaration to the effect that the *Shariah* has been enacted for the benefit of the people. Yet this is a definitive conclusion which is drawn from the collective reading of a variety of textual proclamations. Shatibi then adds that the benefits (*masalih*) are to be understood in their broadest sense which is inclusive of all benefits pertaining to this world and the Hereafter, those of the individual and the community, material, moral and spiritual, and those which pertain to the present as well as the interests of the future generations. This broad meaning of benefits also includes prevention and elimination of harm. These benefits cannot always be verified and ascertained by human reason alone without the aid and guidance of divine revelation.<sup>55</sup>

### **The Application Of *Maqasid* In Selected Aspects Of Land Development**

#### *Alienation Of Land*

Islam recognises the principle that land belongs to Allah (s.w.t.) as the real owner.<sup>56</sup> It prescribes the foundation of policy that the utilisation of land is merely a trust and subject to the law and

conditions imposed by the real owner. The *Imam* or the State Authority or the registered land owner is just a trustee and the use and enjoyment of the land is exclusive but not absolute. Any decision making must be based on the *maslahah* of the public. Certain individuals or groups are preferred than the others as long as there shall be no deprivation of the rights of others. While land may be reserved for certain class of people for their contribution to the country, land must also be made available for others to deal with so that their rights to own land are not deprived.

#### *Integrity In Land Management*

The issue of integrity on land management in Malaysia has been tested for several times and reached the apex court to determine the law.<sup>57</sup> Cases involving fraud, forgery, misappropriation of money, abuse of power as well as corruption are among the common cases been dealt with courts in Malaysia. The latest decision in *Tan Ying Hong v. Tan Sian Sang & Ors*<sup>58</sup> requires the purchasers, banks and their lawyers to be even more vigilant and diligent when conducting land searches and verifying the identities of the sellers before purchasing any property or providing any finance.

A similar issue has also been discussed and yet to be resolved in dealing with management and maintenance of stratified properties. There are many complaints about the integrity of the developers, the property agent or the Management Corporation or even the Joint Management Body in dealing with the fees collected for the maintenance or even the use of other incoming and outgoing funds. More often, the calls for the stricter laws are seen as the best way to reduce the problems. Many believe that the solutions does not only lie with the laws but more on education. All problems occur due to lack of responsibility, greediness and individualistic.

#### *Land Acquisition*

The basis of compulsory acquisition of land is also done for the betterment (*maslahah*) of the people and subject to payment of adequate compensation. Any delay in payment without any reasonable cause amounts to unfairness and unjust act (*Ismail Bakar & Ors v. Director Of Lands And Mines, Kedah Darul Aman*<sup>59</sup> and *Pemungut Hasil Tanah Daerah Barat Daya, Pulau Pinang v. Ong Gaik Kee*<sup>60</sup>).

1. Land transaction is allowed as long as it is done within the concept that man is not the real owner, but a *khalifah* (vicegerent) – trustee.<sup>61</sup> Man's right and enjoyment of land is simply on the basis of utilisation and enjoyment of the land. Man should not commit any act of cheating or misappropriation of property or money. There should be no element of *gharar* (uncertainty), *riba* (interest), monopoly, speculation or wrongful use or abuse of authority in dealing with land. The price should reflect the actual cost or market value of the land and should not be affected by any act of speculation or monopoly.
2. Islam prohibits any elements of *dharar* or damage to others in whatever action or decision relating to land. A landowner cannot damage somebody's land or property in order to have access to his land. One should not indulge in any kind of interference, encroachment or trespass on others' land or property so as to enjoy his rights to the land and/or even with intention to provide benefit to others. Islam never recognises one's good intention if the method used is un-Islamic or against the Islamic principles.<sup>62</sup>
3. Islam never prescribes the limit as to what extent a landowner can use his land. As long as he never transgress to other's rights, and if he continually uses the land in a reasonable manner and not to leave the land idle, comply to any laws that are enacted for the *maslahah*, thus, it is valid and reasonable for him to enjoy his rights or interest over land. As such, the law that when you own the land you own the surface and anything below subject to the law and other principles derived from custom or *adat*, shall be allowed. In Islam, Muslim shares in three things; water, fire, and grass.<sup>63</sup> It is a clear guideline for any authority to make any policy or enact any laws relating to these three basic needs of the people. Islam permits the individual to alienate or dispose of his property by various means like sale, exchange, *hibah* (gift), *waqf* (charitable gift), bequeath or *faraid* (inheritance). Islamic law gives wide powers to the owner to alienate his property in any manner whatsoever he likes. Some restrictions imposed here and there are in the interest of family or in the interest of religion and the community.
4. Islam prescribes a condition that property should be acquired through lawful (*halal*) means and obligations attached with ownership of property should be duly discharged. This

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includes payment of *zakat* and other taxes, expenditure on lawful (*halal*) things, payment of alms (*sadaqah*). However, in exceptional circumstances or in the interest of equitable distribution or social justice, the authority can impose certain limit on landholdings or other forms of property for the *maslahah* of the people at large.

5. The use of underground land is also without any limit and subject to the lawful use, reasonable and needs for the purpose of the utilisation. Nevertheless, there is a conflict of opinion pertaining to the minerals. No doubt some Hanafi jurists say that owner of surface of land is the owner of minerals beneath that land subject to one-tenth (as tax) to the state, but majority of the jurists hold that minerals are public or state property such as mines of gold, silver, iron, coal, salt, petroleum, kerosene oil, copper, *etc.*
6. Like minerals, all those things of common utility which are indispensable to the public, are kept in state control. The *Imam* or the head of state is not authorised to grant such things to any individual. Historically, the lands of Iraq, Iran, Syria, Egypt and Palestine were conquered during the reign of Caliph Umar r.a. Later on, Bilal and Zubair demanded that these lands should be distributed among the soldiers like spoils of war. But the caliph rejected their demand and decided to retain these lands in state control for the common good of all the people including the future generations. The decision to depart from the earlier decision made by the Prophet (SAW) was an example of application of the concept of *maqasid Shariah* by giving preference to the interest of the public which is crucial for future development of a country.
7. *Al Quran* also states the effect of neglecting of the earth as '*Mischief has appeared on land and sea because of (the need) that the hand of men have earned, that (Allah) may give them a taste of some of their deeds: in order that may turn back (from evil)*'.<sup>64</sup> *Al Quran* has reminded us that all things have been created in a due proportion and measure in order to ensure the ecological balances. Once the balance is disturbed, the effect such as global warming and other kind of environmental destructions occur. Thus, the level of *maqasid* would help mankind to prioritise matters as there are secrets that are beyond the knowledge of mankind and only God knows the top secret of His creations.

## Conclusion

A proper understanding of the priority of benefits or *maslahah* referred as the *maqasid Shariah* is crucial for the management of land and its development. Such requirements apply to all involved in land management and development which also include individual owner who may just opt to own land without working to get benefit out of it or the developer who decides to build a multi storey building. *Maqasid Shariah* provides a clear basis or framework for land policy. It determines the law as well as suggests solutions for any conflict of laws or conflict of interests. Land development deals with rights, interests and expectation of many parties. Conflicting of interests and claims demand for a guideline to identify whose rights prevail against others. Islam always gives priority to the *maslahah* of the public in preference to the rights of the individuals, Islam upholds the importance of religion above the other priorities but give high position to the protection of one's life rather than property. *Maqasid Shariah* emphasises about moderation in all aspects of life and concern about rights of others either through taxes, providing employment as well as preserving property for future generation.

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