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Finally... RM6.5mil compensation for Orang Asli



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May 26, 10
11:19am

TEXT SIZE 1 2 3

After a 15-year legal battle, 26 families of a Temuan tribe in Selangor have obtained RM6.5 million in compensation for their native customary land which was seized to build a highway to the Kuala Lumpur International Airport (KLIA).



Sagong Tasi, 78 (left), and six others - two of whom have since died - had filed a suit against the federal government, the then BN-led Selangor government, Malaysian Highway Authority (MHA) and contractor United (UEM).

This was after their land was acquired without compensation to build the Nilai-Banting highway that also runs to KLIA in Sepang in January 1995.

The landmark settlement made by the Federal Court this morning also has the effect of recognising the native customary rights of these Orang Asli to the 38-acre site of their former settlement in Bukit Tampoi, Dengkil.

Chief Judge of Malaya Arifin Zakaria, Chief Judge of Sabah and Sarawak Richard Malanjum and James Foong, who made up the three-member bench, ordered the sum to be deposited with the Shah Alam High Court within a month from today.

Senior federal counsel Kamaluddin Md Said - who was assisted by senior federal counsel Saifuddin Edris Zainuddin representing the federal government - said the other two parties, MHA and UEM, have agreed to withdraw their appeal over the Court of Appeal decision.

"We want the court to record settlement by both parties," he said. UEM was represented by Harjinder Kaur.



Senior counsel Dr Cyrus Das concurred with the settlement.

He led a panel of lawyers, who included Steven Thiru, Jerald Gomez, Abdul Rashid Ismail and David Matthews, in representing the Temuan tribe,

Selangor legal adviser Zauyah Be Loth Khan informed the court that the Pakatan Rakyat government had withdrawn its appeal last year.

Following this, the quantum - believed to be under RM200,000 per acre - is to be disbursed by the Shah Alam High Court to the affected parties after MHA pays up.

Landowners, not tenants

Although there are seven plaintiffs including Sagong, the decision affected some 26 families.

Their land planted with fruit trees, oil palm, rubber and other crops, all of which were destroyed along with a community hall.



The other plaintiffs were Kachut Tunchit, Dabat Chabat, Kepal Kepong, Sani Saken, Ilas Senin and Tukas Siam. Two others - Tok Batin Tukas and Kachut - are deceased.

The 15-year deadlock was broken on April 22 last year when the Selangor government - led by Pakatan since March 2008 - pulled out from challenging the suit.

However, the federal government and other parties obtained a stay on the court orders.

On April 12, 2002, Shah Alam High Court judge Mohd Noor Ahmad had ordered both the federal and state governments, MHA and UEM to pay damages to the plaintiffs.

He recognised the existence of Orang Asli native (in this case the Temuan) land title in common law and ordered compensation to be assessed according to the Land Acquisition Act 1960. He also ordered MHA and UEM to pay damages for trespassing.

Prior to this landmark



judgment, the government had considered the Orang Asli as mere tenants on the land.



The acquisition of their ancestral land is not protected by the Land Acquisition Act, unlike in cases involving private land.

On Sept 9, 2005, the Court of Appeal upheld the decision, determining that the lower court was correct in awarding compensation.

'Long time coming'

The affected parties thronged the court wearing traditional headgear.

Sagong said the decision has been a long time coming as he and the others had been walking in and out courts all these years to obtain justice.

He said many of them are old and two have passed away.

"They (the authorities) came to claim our ancestral land to build the highway. Three acres of my land, planted with crops, were seized," he said.



"This land belongs to our ancestors as it has been with us for about 200 years and we felt that we had the right to be compensated."

Although he was not satisfied with the quantum, Sagong said it is better than nothing.

"The government asked us to accept the sum as it says it had limited funds. We are thankful for this and thank the lawyers involved. It was a long struggle," he said.

Asked what he would do with the money, Sagong said he would perhaps take 10 wives or build another house.

Exco: Decision made possible by Pakatan

Selangor executive councillor Elizabeth Wong said the Pakatan government's move in withdrawing its appeal last year had paved the way for the settlement.

"As land is under the state's purview, we in the Pakatan government respected the High Court and Court of Appeal decisions in recognising it as part of their customary land," she said.



"It took a year for the remaining parties to discuss the settlement."

Wong said that, with the court decision and settlement, the federal government would have to rethink its current rules and position, and amend the National Land Code.

"There is an effort to amend the Act, which may limit the quantum of compensation for the land, as opposed to what they may have been accorded to if it is native customary land," she said.

"The decision by the federal government to amend the Act should not go against the spirit of the court decision in this case."



The Orang Asli have, over the past few months, increased pressure on the government to recognise their land rights.

On March 17, the community **protested in**

Putrajaya to amendments in the National Land Code, among others.

Two months later, they **handed a memorandum** to the Rural Development Ministry over their plight.