

DBKL TO PAY RM1.15M FOR ENCROACHMENT

Landowner who sued City Hall for building monsoon drain on his property wins

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A 15-YEAR legal saga came to an end for a 71-year-old man as the High Court awarded him RM1.15 million after ruling that City Hall (DBKL) had encroached on his land to build a monsoon drain.

R.R. Meyyanathan, who owned the 17,847 square feet (about four basketball courts) of land near Petaling since April 6, 2005, and had intended to build a few bungalows on it.

The plaintiff (Meyyanathan) ar-

gued that the monsoon drain, which had taken up 2,411 square feet of his land, was constructed by the defendant (DBKL) without his permission, affecting his legal rights to enjoy his land.

The plaintiff had repeatedly asked the defendant to relocate the structure as he had continuously suffered loss and damage due to the maintenance and improvement works on the monsoon drain, but these requests were to no avail.

Meyyanathan pleaded that DBKL had taken part of his land for its purpose and use without compensation which was tantamount to illegal deprivation of his property.

He sought a mandatory injunction to order DBKL to remove the structure or to compel it to purchase the part of his land taken for the monsoon drain at the prevailing market price.

The plaintiff also sought damages for severance loss and injurious affection on his land, which the court deemed reason-

able.

DBKL denied that it had trespassed on Meyyanathan's land and claimed that the structure on the latter's land was not a form of encroachment.

The defendant pleaded justification as it relied on its power to maintain, manage, build, and improve monsoon drains in the city, including the plaintiff's land.

DBKL claimed that the monsoon drain was part of the drainage and natural stream that existed on the land in 2004 or even earlier.

The defendant contended that the monsoon drain that formed the waterway could not be closed or demolished arbitrarily as it would result in flash floods, soil erosion, or cracks or deposits in the area and its surroundings.

DBKL pleaded that its actions were justified by law and that public policy offered it immunity from all tortious liabilities in the execution of its duties.

Judge Roz Mawar Rozain in her judgment last month said it could

be concluded with great certainty that the location of the monsoon drain was within the plaintiff's land and that he did not consent to this.

The defendant had also failed to adduce any evidence to show otherwise and there was also no challenge as to the amount of land that the monsoon drain had encroached on.

DBKL was also unable to produce any documents or records that showed the monsoon drain was constructed before 2004.

"This court concludes based on the evidence that, on a balance of probabilities, the plaintiff had indeed purchased the land and that the monsoon drain was not there when he purchased it.

"There was no evidence of who had built this rubble pitching structure, but it was most certainly not the plaintiff.

"This court finds that the monsoon drain located in the plaintiff's land is the defendant's."

She said the fact remained that what was now on the plaintiff's

land was a concrete man-made structure which was under the purview and jurisdiction of the defendant.

She said the court concluded that the monsoon drain, even when it could not be proven that it was a reserved main monsoon drain, it still ought not to be removed or relocated due to public interest.

"This court orders that the defendant acquire from the plaintiff the portion of land (2,411 square feet) it had encroached on at the prevailing market price. The court awards the plaintiff damages at the rate of RM200 per day from Jan 8, 2008, until the date of this judgment. That would amount to RM200 multiplied by 5,757 days which amounts to RM1,151,400," she said.

She also ordered costs of RM45,000 to be paid by the defendant to the plaintiff.

"DBKL could have avoided these legal proceedings if it had engaged with Meyyanathan prior to this suit," she added.