

Fisher folks and NGOs dismayed with outcome of PSR case

The nine Applicants led by Zakaria Ismail and six other fisher folks with Sahabat Alam Malaysia (SAM) and Jaringan Ekologi dan Iklim (JEDI) are dismayed and disappointed with the decision of the Penang High Court dismissing their Application for Judicial Review (JR Application) to challenge the planning permission granted to the Penang State Government by the State Town and Country Planning Department. The JR Application was dismissed with no order as to costs.

In their submissions to court, the Applicants raised the following:

- (a) that the Respondents failed to comply with the Town and Country Planning Act 1976 (TCPA 1976) including,
 - (i) failure to obtain the advice of the National Physical Planning Council (NPPC) prior to the approval of the Draft Structure Plan 2030 (DSP 2030) by the Penang State Planning Committee (Penang SPC); and
 - (ii) failure to seek the advice of the NPPC when the application for Planning Permission was submitted by the Penang State Government.
- (b) that the Respondents committed a serious error of law when the PSR Masterplan was referred to the NPPC for advice and directions under the TCPA 1976 when the DSP 2030 had not yet come into legal effect, and the Structure Plan in force then was Structure Plan 2020. The Structure Plan 2020 did not provide for the PSR Project in the area concerned.
- (c) that the Respondents failed to undertake the process for the alteration and/or amendment of the 2030 Penang Structure Plan to reflect the scaling down of the PSR Project from three islands to one island and this deprived the applicants from having an opportunity to provide feedback and objections as provided for under the TCPA 1976.
- (d) that there was no completed Environmental Impact Assessment Report (EIA Report) for the PSR Project at the time the Planning Permission was granted by PLANMalaysia Penang because the EIA process under the Environmental Quality Act 1974 (EQA 1974) includes the right of statutory appeal. This had not yet been exhausted due to delay and inaction by the Appeal Board established under the EQA 1974.
- (e) that the many adverse environmental and social impacts of the project, and irretrievable destruction to the livelihood of the fishers in the area (which was recorded in the EIA Report) were not taken into account adequately, or at all, by PLANMalaysia Penang in granting Planning Permission.
- (f) that the 1st to the 3rd Respondents committed breaches of fiduciary duty and public trust in the grant of planning permission for the PSR project.

Despite lengthy submissions by the Applicants on the Respondents' non compliance with the TCPA 1976 at various stages of the planning process, the High Court found in favour of the Respondents.

The High Court dismissed the JR Application, stating amongst others, that the application was filed out of time and the Respondents had complied with the TCPA 1976 and therefore there was no illegality, irrationality or unreasonableness in the decision making process in the grant of the planning permission.

The High Court also agreed with the Respondents' submission that there was no need to review and alter the Penang Structure Plan 2030 on the downsizing of the PSR Project since Islands B and C were merely shelved and not abandoned.

Despite the clear and unambiguous public representations by the Penang State Government that they Islands B and C would no longer be implemented, it was revealed during the exchange of affidavits in these proceedings that the Penang State Government had actually merely 'shelved' Islands B and C temporarily and had not limited the PSR Project to only Island A.

While expressing their respect for the decision of the court today, the Applicants who are mainly fisher folks impacted by the PSR Project feel dejected that their pleas and complaints have been ignored, and their rights disregarded.

According to the Environmental Impact Assessment (EIA) Report, the PSR Project will cause permanent and irreversible loss to the ecosystem. Apart from this, the lives and livelihoods of the coastal fishers in the southern part of Penang will also be adversely affected.

The Applicants will be filing an appeal against this decision in due course.

Mageswari Sangaralingam
Honorary Secretary
Sahabat Alam Malaysia (SAM)

Khoo Salma Nasution
President
Jaringan Ekologi dan Iklim (JEDI)