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Harvesting Malay reserve land

A CREATURE of noble intention, the present law governing Malay reserve land has proven to be anachronistic. Restrictive in its ambit, it has created a land-owning community of idle properties, alienated from the country's development. Kuala Lumpur's Kampung Baru, for instance, is an island of under-development: a ghettoised existence of urban Malays.

The laws on Malay Reserve Land were introduced on Jan 1, 1914. Different laws in the various States governed the land, such as Malay Reservations Enactment Kelantan 1930, Malay Reservations Enactment 1913 for Perak, Selangor, Negri Sembilan and Pahang and Malay Reservations Enactment Johor 1936. In Terengganu, such land is termed as Malay Holding and in Kampung Baru, Malay Agricultural Holding.

According to Article 89, Sub-Article 6 of the Federal Constitution, Malay reserve land is specially designated land that can only be legally owned by Malays or natives of the State. By constitutional definition, a Malay is a person who professes the religion of Islam, speaks the Malay language and conforms to the Malay customs. But the State enactments provide different definitions of Malay. The gamut of effects denote the confusion over the question of identity. The peculiarities are evident: Malays of Arab descent are denied of any rights to the reservation in Johor, Malay non-natives of some States cannot lay claim to the land and in Kelantan, Chinese of many generations can own the land as they are considered "natives of Kelantan".

The oddities aside, all the legislations prohibit any dealings affecting these land by non-Malays. However, if there is royal consent, the non-Malay party can be considered a Malay and is allowed to purchase the land. Doubtless, the statutory restrictions ensure that the ownership of the land would remain in the hands of the Malays. But these protective clauses also prevent the Malays from reaping commercial benefit from the land.

Most owners do not have the financial and technical means to plough the land into good use. Since the land offers very little value, many care naught if the land were encroached by illegal migrants. Like it or not, it must be openly recognised that the law on Malay reserve land has not benefited the Malays at all. Vast tracts of it remain in abject condition. Although the Government has the right to confiscate land that is left idle for a long period of time, such a drastic action would defeat the legislative objective of investing the Malays with unassailable ownership rights on the gazetted land.

Clearly, the Malay reservation enactments must be amended and streamlined to pave the way for economic activities on the reservation without compromising its Malay ownership. The objective of the law need not be defeated. With some pragmatic deployment of legislative measures, the commercial value of the land can be harvested. For instance, non-Malays and landowners can embark on joint venture projects, be it agricultural, commercial or industrial. Alternatively, the land can be leased for a period of time - a minimum of 50 years is realistic - to non-Malays, private companies and multinationals. In this way, the owners of the land can derive real benefit from it without forfeiting their ownership or the status of the land.

The statutory restrictions must be modified. The need for such an amendment has been recognised by Prime Minister Datuk Seri Dr Mahathir Mohamad. And most recently, Minister in the Prime Minister's Department

Datuk Seri Dr Rais Yatim said he would be tabling a paper on the issue to the Cabinet. There have been strident calls for such amendments in the past - not once but several times. Indeed, the proposals to breathe life in the Malay wasteland are hardly new.

Doubtless, many are awaiting the fruition of the proposed amendments. Surely, the process need not be ponderous. The fate of the Malay reserve land lies in the swiftness of the authorities to remove the legal impediments that have turned it into barren land.