

07/06/2003

Greening of the law

Salleh Buang

MANY interesting (and distressing) stories made the headlines just before the school break last month.

In foreign lands, there was the civil war in Aceh, earthquakes in Algeria and other places, the road map to peace in the Middle East and a capsized ferry in the Philippines.

In our own backyard, we had the change in MCA leadership, Prime Minister Datuk Seri Dr Mahathir Mohamad's remarks about unbalanced development in Penang Island, and the latest on Brunei's claim over Limbang.

My topic for discussion this week pales in comparison to these issues - it has to do with the case of disappearing football fields, open spaces and recreational areas, otherwise known as green lungs in our housing estates.

"Now you see them, now you don't, dad," is what my youngest daughter had to say on the subject. Mind you, she is only 13, but with regard to this highly sensitive issue, she can speak with the authority of an adult.

Personally speaking, my family is blessed. The children's playground in our housing estate in Alor Star (where my neighbours play sepak takraw, P. Ramlee style, most evenings) is still intact and in fairly good shape. This is probably because our estate is comparatively small, and because we are practically under the nose of the Kota Star city council.

But what about the many other home owners in other housing estates? Are their greenfields still intact, or are they now building sites? And even if the fields are still there, is there any guarantee they will still exist for future generations to enjoy?

Stories about "lost playing fields" normally have more or less the same plot and sub-plots.

In the Bandar Bayan Baru housing project, a three-decade old playground in Jalan Medan Mayang Pasir in Penang was replaced by its owner, the Penang Development Corporation (PDC), with a terraced housing scheme.

Understandably distressed, the deprived local residents urged the PDC to shelve its idea, for the sake of the residents' welfare. They sought help from their state politician, Datuk Kee Phaik Cheen. However, she was unable to do anything, and even went on record as saying that PDC had every right to take back the playground.

Like it or not, that is what the Torrens land system is all about. Under the National Land Code, an owner has the absolute right (subject to planning law) to do whatever he likes with his land, never mind the fact that most buyers of Bandar Bayan Baru bought their houses thinking that the playing field was part of what they paid for.

If the written law is of not much help, neither are the Courts, which are similarly powerless to help aggrieved residents. After all, the Courts can only declare the law, and have no power to make or change it.

Only politicians sitting in Parliament and the State Legislative Assemblies can do that. Take the case of Lee Freddie & Ors v Majlis Perbandaran Petaling Jaya & Anor [1994] 3 MLJ 640 as an example.

In this matter, a green lung in Petaling Jaya, Selangor, had been used by residents for 20 years as a playground. The residents did not know it was in fact, private property.

All this while, the developer allowed it to remain vacant and did not object to the residents using it for their own enjoyment.

When the developer finally decided it was time to build upon the land,

the residents filed proceedings to stop the venture by asking the Court to quash the planning permission granted by the local planning authority. They failed.

Dismissing their application, the High Court said the residents had no legitimate grounds to prevent the developer from carrying out development and shouldn't expect uninterrupted enjoyment of the playing field.

The learned trial Judge asked, in somewhat rhetorical fashion, "Where is the legitimacy of an expectation that an adjoining landowner should not be allowed to build at all on his land merely because he has left it vacant for a number of years?"

In a nutshell, do not pin too much hope on your playing field today enduring the test of time, unless you have actually checked with the relevant authority and verified it for yourself that the land is in fact State land, duly gazetted for uses such as a playground, football field or recreation area.

Even then, I know of cases where a State authority "accidentally" degazetted a playing field and subsequently alienated the land to a developer for the construction of a highrise building.

The next time you hear stories of residents losing their only playing field, remember this: It is not only a case of not enough law (to prevent it from happening), it is also a case of not enough commitment on the part of the relevant authorities to keep playing fields for our future generations.

* Professor Salleh Buang is the senior advisor of a company specialising in competitive intelligence. He is also active in training and public speaking and can be reached at sallehbuang@hotmail.com