

Ambiga countersues Putrajaya over Bersih rally
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By Debra Chong

KUALA LUMPUR, June 8 — Bersih chief Datuk Ambiga Sreenevasan is seeking damages from Putrajaya for allegedly violating her constitutional rights over the April 28 electoral reform rally, in a countersuit filed at the High Court this morning.

The prominent lawyer-activist accused the Najib administration of abusing its power in ordering the police and the Kuala Lumpur City Hall (DBKL) to block the sit-down rally from taking place in the national capital, which she said would have been as peaceful as those held elsewhere in the country.

Last month, Putrajaya took the unprecedented step of suing Ambiga and nine other Bersih steering committee members, as the rally organisers, for damages worth RM122,000.

“The plaintiff, whether acting through its agencies (including the police, DBKL and mass media) or otherwise, wilfully and deliberately took all measures to prevent or thwart the holding of the assembly by Bersih at Dataran Merdeka on 28th April,” Ambiga said in her statement of defence and counterclaim, which was made available to The Malaysian Insider.

She added: “It follows that the sole cause for the way in which the assembly in Kuala Lumpur on 28th April unfolded was due to the conduct of the police, for which the plaintiff, as employer, is liable in law.”

Ambiga said the newly-enforced Peaceful Assembly Act does not “expressly or impliedly” empower the federal government to sue for damages to public property as it is “not a member of the class of persons intended to be protected under the Act”.

She also said the demonstrators who took part in the rally did so as “free agents” and that neither she nor Bersih as the organisers were liable for events that happened after she had announced it over at 2.40pm and asked them to disperse.

Conversely, the police had a “positive duty in law” to ensure that lawful assemblies could take place, which she accused them of having failed.

“The police had wilfully and deliberately started using water cannons, firing tear gas and then taunting, mocking and provoking the people present and carrying out other acts of intimidation and violence against persons who were in the process of dispersing,” she said in her statement.

The decorated former Bar Council president pointed out that the authorities had been aware of Bersih’s plan from early on to hold a peaceful public sit-down demonstration at the city’s historic Dataran Merdeka, based on the election watchdog’s press releases on April 5 and further official letters to the mayor and police dated April 16 — more than a week before the event.

She pointed out that DBKL had rejected Bersih’s request for Dataran Merdeka without offering an alternative venue, noting that the decision ran counter to the federal territory’s local government by-laws.

DBKL's move to offer Stadium Merdeka — Bersih's venue of choice for the July 9 rally last year — as an alternative was only made at a meeting on April 25, three days before the demonstration, she said.

Ambiga said Bersih had to turn it down due to the "extremely short notice".

"However, Bersih made it clear (and had at all times made it clear) that they were ready to co-operate with the authorities to ensure a peaceful assembly.

"At no time did either the police or DBKL call for a meeting to discuss the logistics of the assembly," she said in her statement.

The police had also rejected Bersih's bid to carry out the assembly without providing a reason, Ambiga said, adding that it was "wrong in law".

"Although it was public knowledge by at least 5th April that Bersih was holding an assembly in Kuala Lumpur on 28th April, the police, acting in bad faith and wrongfully, made the application for the said Magistrate's order on an ex-parte basis a mere two days before the assembly and served only one day before the assembly, thereby denying the First Defendant an opportunity of opposing the granting of the said Order or applying to set it aside."

She said the police also had no "objective reasons" to assemble a large force in the city on the day of the rally and "no legal grounds" to erect barbed-wire barricades encircling Dataran Merdeka to prevent anyone from accessing the public square.

Ambiga is also challenging assembly law's constitutionality, specifically Section 6, for restricting her right to assemble.

The government filed its suit against Ambiga last May 23 under Section 6(2)(g) of the law, which states that organisers must "ensure that the assembly will not endanger health or cause damage to property or the environment."

"The plaintiff charges that the defendants failed to carry out their statutory responsibility when the assembly went out of control and turned into a riot, causing damage to vehicles owned by the plaintiff," the writ said.

The government's statement of claims lists 15 vehicles, mostly belonging to the police, that had to be repaired at a cost of RM122,000.

The government also wants general damages, interest and a declaration that Bersih breached Section 6(2)(g) of the assembly law.

Prime Minister Datuk Seri Najib Razak had said when tabling the law in Parliament last year that it would be "revolutionary" and allow Malaysians to participate in public gatherings "in accordance with international norms."

The case is set for mention on June 13 before Kuala Lumpur High Court judge Justice Prasad Sandosham Abraham.

The April 28 rally that saw tens of thousands gather at six different locations before heading to Dataran Merdeka was peaceful until about 2.30pm when Ambiga asked the crowd to disperse.

But her call was not heard by most of the crowd who persisted around the historic square, which the courts had already barred to the public over the weekend.

Just before 3pm, some protestors breached the barricade surrounding the landmark, leading police to disperse the crowd with tear gas and water cannons.

Police then continued to pursue the rally-goers down several streets amid chaotic scenes that saw violence from both sides over the next four hours.

Several dozen demonstrators have claimed that they were assaulted by groups of over 10 policemen at a time and visual evidence appears to back their claim but police also point to violence from rally-goers who also attacked a police car.

The police car then crashed into a building before some protestors flipped it on its side.

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