



**KUALA LUMPUR BAR – LINCOLN'S INN ALUMNI ASSOCIATION
OF MALAYSIA MOOT COURT COMPETITION 2023**

MOOT QUESTION



IN THE FEDERAL COURT OF MALAYSIA

ANJALI NAIR & 2 OTHERS

(Appellants)

v.

(1) DATUK BANDAR KUALA LUMPUR

(2) KERAJAAN MALAYSIA

(Respondents)

MOOT QUESTION

1. Taman Seri Bukit Park, often referred to as the 'Emerald of KL', is a treasured green space in the heart of the city. Located adjacent to Pearl Residences Condominium, this park has long been an oasis amidst the concrete jungle, offering a respite to the city's residents. Beyond its aesthetic appeal, Taman Seri Bukit Park holds significant ecological value. Designated as a green area, public open space and recreational area under the Kuala Lumpur Structure Plan, the park is a haven of biodiversity, housing an array of endemic flora and fauna. Over the years, it has been a vibrant ecosystem, home to several indigenous species, some of which are critically endangered.
2. Dr. Suresh Nair, an esteemed environmental scientist and resident of Pearl Residences, has consistently enjoyed the tranquil environment of the park with his 18-year-old daughter, Anjali Nair. Anjali, an impassioned youth climate activist, firmly believes in the importance of green spaces in mitigating the adverse impacts of climate change.



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3. In mid-2021, Suresh stumbled upon an announcement made by the Datuk Bandar of Kuala Lumpur (“**Datuk Bandar**”) and the Federal Government which disclosed a plan for the construction of a new mass rapid transit (“**MRT**”) line known as the “**MRT4**”, which would cut through Taman Seri Bukit Park. This ambitious public transportation project was to be executed by BlueBay Rail Sdn. Bhd (“**BlueBay Rail**”), a prominent private construction firm, based on a concession granted by the government.
4. The KL Structure Plan 2020 had earmarked the park as a green area, public open space and recreational area in the city. It was also regarded by many environmentalists as the city’s green lung. However, the Datuk Bandar and the Cabinet, greenlit BlueBay Rail’s project by January 2023. The proposed MRT4 line is set to dissect Taman Seri Bukit Park and continue its stretch across several residential areas such as Bangsar, Seputeh, and Pantai Dalam, and extend to other parts of the Federal Territory of Kuala Lumpur as well. Along its path, the MRT4 is also proposed to run adjacent to schools like the Bangsar Primary School and Pantai Dalam High School.
5. The authorities claimed that the new MRT4 would act as a critical link between Kuala Lumpur's bustling business district and the northern regions, aiming to reduce traffic congestion, integrate the various public transportation services, promote economic growth, and increase accessibility to other areas of Kuala Lumpur which does not yet have an LRT or MRT line. Authorities provided data showing significant traffic congestion on existing roads and highways, leading to long travel hours, increased pollution, and economic inefficiencies. The MRT4 was projected to reduce traffic congestion in many areas as well as existing roads, and also reduce travel time by up to 45%, thereby improving overall productivity. Most importantly, the construction of the MRT4 would be in line with the Federal Government’s goal of getting the public to increase their



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usage of public transportations, especially when travelling to heavily congested areas such as the KL city centre, and to also reduce carbon emissions from vehicles on the road.

6. However, preliminary assessments by transportation experts indicated that the MRT4 would potentially increase road traffic in the residential areas where the MRT stops would be built especially during the construction stage. While it would help relieve the congested city centre routes, the immediate vicinity of the MRT4 stations would experience a surge in vehicle numbers from the multi-storey parking facilities and also the drop-off and pick-up areas. There will also be an increase in buses and e-hailing vehicles at these stations. All these will lead to potential noise and air pollution in those particular areas.
7. Drawing from her father's scientific expertise, and angered by the turn of events, Anjali initiated a data-driven campaign "Stand Up as an EcoHero Today" to expose the potential environmental repercussions of the proposed MRT4. The findings showed that the construction of the MRT4 would cause severe habitat fragmentation, irreversibly destroy the biodiversity and eco-system of Taman Seri Bukit Park which comprises of various flora and fauna, as well as degrade its natural features. The plan for MRT4 also shows that a station would be built on a part of the park which is affectionately known as "Kancil Corner" to many, as it is home to a herd of kancil for generations.
8. Anjali's group of youth activists, the EcoHeroes, pointed out that Malaysia had proudly pledged its Nationally Determined Contributions (NDC) under the Paris Climate Agreement to reduce its greenhouse gas emissions intensity by 45% by 2030. However, the MRT4 project seemed to be moving in the opposite direction. The environmental concerns were not just limited to the immediate ecological footprint of the MRT4.



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Taman Seri Bukit Park, being a green area, public open space and recreational area, played a crucial role in offsetting carbon emissions in the metropolitan area. Destroying this green lung by way of the construction of the MRT4 line would adversely affect Kuala Lumpur's carbon sequestration capacity.

9. Representing a broader concerned KL demographic, EcoHeroes joined hands with others to form Citizens for Environment and commenced a legal challenge against the decision of the Datuk Bandar and the Malaysian Government through a judicial review application. Anjali together with two of her friends are the applicants in the judicial review and are suing in two capacities:
 - a. Firstly, as officers of Citizens for the Environment (CFE) on behalf of CFE, an environmental non-governmental organisation (“**NGO**”).
 - b. Secondly, as the representative applicants, representing the youth of Malaysia.

10. They contended that the construction of the MRT4 is not only an environmental concern but also impinged on the rights of the citizens to a healthy environment. They asserted that the approval of the construction of the MRT4 is contrary to Chapter 15 of the KL Structure Plan 2020 which:
 - a. designated Taman Seri Bukit Park as a “green area, public open space and recreational area” for the city;
 - b. contains commitment to preserve existing green areas and parks in Kuala Lumpur; and
 - c. provides for adequate buffer areas between the proposed MRT4 with residential developments around the area.



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11. They also argued that the Malaysian Government's approval of the MRT4 concession is in breach of its commitment under the Paris Climate Agreement and its commitment under the National Policy on Climate Change for transition towards a low carbon economy. To that end, the applicants argued that:
 - a. they have the right to a clean and healthy environment implicit in Article 5 of the Federal Constitution;
 - b. the government has the duty to protect their right to a clean and healthy environment; and
 - c. the Malaysian government's approval is in breach of the rights above.

12. Leave was granted by the High Court for the applicants to commence judicial review. However, the High Court and subsequently, the Court of Appeal, dismissed their judicial review application, agreeing with the following arguments made by the Datuk Bandar and the Government of Malaysia:
 - a. The applicants have not established their *locus standi* in the proceedings;
 - b. Chapter 15 of the KL Structure Plan indicates that the provisions are merely policy suggestions, not mandatory obligations;
 - c. the right to a clean and healthy environment is not expressly recognised as a fundamental right in the Federal Constitution; and
 - d. the approval of the MRT4 is a policy decision that is non-justiciable.

13. The applicants then obtained leave to appeal to the Federal Court, in relation to the following questions:
 - a. In respect of the issue of locus standi:
 - i. Whether an environmental NGO like the Citizens for the Environment has the locus standi to commence a judicial review to challenge the decision of public or governmental authorities in relation to development issues; and



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- ii. Whether individuals have the locus standi to commence a representative action in a judicial review to challenge the decision of public or governmental authorities in relation to development issues?

- b. Whether Chapter 15 of the KL Structure Plan 2020 creates a binding commitment which requires strict compliance by the Datuk Bandar?

- c. Whether the right to a clean and healthy environment is implicit within Article 5 of the Federal Constitution and, if so, does the government bear the constitutional duty to safeguard this right for its citizens?

- d. Is the decision by the Datuk Bandar and Government of Malaysia to approve the construction of the MRT4 a policy decision and, consequently, non-justiciable?