

Building fees: A new ruling by the Federal Court reminds parcel owners of their right to challenge unequal maintenance rates imposed by management bodies. — AZHAR MAHFOF/The Star

Landmark ruling bans unequal fees

Management bodies cannot impose different maintenance rates for parcels

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PETALING JAYA: High-rise living offers breathtaking views and modern convenience, but it also comes with a non-negotiable price tag: maintenance fees.

The situation begs the question: can the management body simply decide that some owners should pay a different rate than others?

A recent court decision involving Hatten Square in Melaka has highlighted the rights of owners when it comes to how such charges are determined.

On Sept 8, the Federal Court unanimously dismissed Hatten Square's management corporation's application for leave to appeal against a Court of Appeal decision concerning the imposition of different maintenance charge rates during the Joint Management Body (JMB) period.

A three-member bench comprising Federal Court judges Justices Ahmad Terrirudin Mohd Salleh, Che Mohd Ruzima Ghazali and Collin Lawrence Sequerah dismissed the application with costs of RM50,000 to Brickworks Realty Sdn Bhd.

The decision ends the management corporation's attempt to overturn a Court of Appeal ruling that reinstated the Strata Management Tribunal's verdict, declaring the different rates imposed during the JMB period "null and void".

The dispute arose from a resolution passed at the JMB's first annual general meeting (AGM) on April 24, 2021, which imposed different maintenance charge rates on the retail mall, hotel suites and car park components of the Hatten Square mixed development.

Weighing in, lawyer Datuk Joy Wilson Appukuttan said owners

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in other developments may challenge different maintenance rates imposed by their JMB, following the Federal Court's decision.

He said the key principle was that a decision made by owners at an AGM could not override the law.

"A JMB AGM cannot pass resolutions that are inconsistent with the Strata Management Act 2013 (Act 757).

"To do so renders such a resolution null and void," he said in an interview.

Joy said management bodies that are currently imposing different rates should take steps to regularise their charges.

"The amount each owner pays is already linked to the share units assigned to their property, which are determined when a development is divided into individual units.

"These calculations take into account factors such as the type, size and characteristics of each property," he said.

Strata Owners Association Malaysia president Datuk Theng Book said the principle was important because individual owners should not have to compete with the financial strength or influence of larger parcel owners to have their rights respected.

He said the share-unit system already considers the various uses of properties.

"The majority cannot vote to make something lawful if the law does not permit it," he said.

Law Hock Hua, adviser of the Selangor and Kuala Lumpur Strata Property Owners Association, said the decision was significant because there could be a considerable imbalance between large parcel owners, developers or parties linked to developers and individual owners.

He said a small parcel owner could be a pensioner, retiree, family member or small business owner who might have limited resources to challenge a decision.

"The law should be the equaliser. It should not matter whether an owner has one small parcel or controls hundreds of parcels.

"The management body must operate within the same statutory framework," Law said.

He also said an AGM resolution could not override the requirements of legislation and that owners should not assume something was lawful simply because it had been approved by a majority.