Tiessen Trading Pte Ltd v Collector of Land Revenue
[2000] SGCA 27

Case Number : CA 241/1998

Decision Date : 17 May 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Jimmy Yim SC and Ian de Vaz (Drew & Napier) for the appellants; Eric Chin Sze Choong and Tan Hee Jiok (State Counsel) for the respondent

Parties : Tiessen Trading Pte Ltd — Collector of Land Revenue

Land – Compulsory acquisitions – Compensation payable – Land valuation – Appeal against award by Land Acquisition Appeals Board – Appeal to Court of Appeal only upon question of law – Whether issue of proper method of valuation raises question of law – Whether appellants can appeal – s 29(2) Land Acquisition Act (Cap 152, 1985 Rev Ed)

(delivering the grounds of judgment of the court): This was an appeal from the decision of the Land Acquisition Appeals Board (`the Board`) ordering that a sum of $5.2m be paid by the Collector of Land Revenue to the owners of Lot 172 Mukim 32 (`the subject land`). The subject land is situated on the island of Pulau Ubin. It was compulsorily acquired by the government for the public purpose of expanding the Outward Bound School`s training grounds and the National Police Cadet Corps` camping site, as well as for the development of an adventure and nature park pursuant to Notification No 2108 dated 5 June 1993 and published in Government Gazette No 27 on 11 June 1993.

At the start of the hearing, counsel for the Collector raised a preliminary objection concerning the appeal. After hearing arguments from both sides, we upheld the preliminary objection and dismissed the appeal without listening to any arguments on the substantive merits. We now give our reasons.

The background facts

The subject land was derived from its parent lot, Lot 132 Mukim 32, which was subdivided into two lots: Lot 171, measuring some 74,783 sq m; and the subject land, being significantly larger in size and measuring around 1,254,252 sq m.

Lot 171 was compulsorily acquired by the government on 20 August 1990. Compensation in the amount of $248,800 or $3.30 per sq m (`psm`) was duly paid out to the appellants. No dispute was raised by the appellants concerning the compensation for this piece of land.

The subject land meanwhile was a very large and irregularly-shaped piece of land occupying nearly half of the island of Pulau Ubin. Most of the land, about 1,210,752 sq m of it, was zoned `rural`, the permitted use of which was agriculture. The remaining 43,500 sq m was zoned `mineral workings` in the Master Plan. The topography of the subject land was largely hilly, comprising of a total of five hills varying in height from 15m to 26m. The hills were littered with old rubber trees and wild vegetation while the foothills were covered with fruit trees. According to the facts as found by the Board, three temples, three restaurants and approximately 62 dwelling houses lay scattered on the foothills and along the slopes of the hills. More than 20% of the land was covered with swamps, disused ponds and shallow waters.

The parent lot, Lot 132, was originally owned by one Ng Eng Kiat. In 1973, Ng submitted an application to the Planning Department proposing to build a residential and holiday resort on both

pieces of land. His application was refused on the ground that the site fell within the rural zone of the Master Plan and the policy then was not to allow the permanent development of such land.

In March 1979, Lot 132 was mortgaged to the Far Eastern Bank for $3m. More than ten years later in December 1989, the mortgagee engaged a private valuer, Knight Frank Cheong Hock Chye & Baillieu (Property Consultants) Pte Ltd, to value Lot 132. The valuation yielded the following results:

Open Market Value	:	$	3.25m	or	$	2.45	psm
Forced Sale Value	:	$	2.44m	or	$	1.84	psm

On 9 January 1990, the Far Eastern Bank, exercising its power of sale as mortgagees, sold Lot 132 to one Swee Yew Seong for $3.5m. Swee in turn sold the land to the appellants three days later on 12 January 1990 for $4m.

One of the principal activities of the appellants was real estate development. In April 1990, the appellants applied for planing permission to develop Lot 132 into a resort village comprising hilltop and waterfront condominium housing, a golf course, sea sports centre, holiday chalets, youth hostels and other ancillary facilities. Permission was denied on 17 May 1990 on the ground that the site was affected by a public scheme. In June 1990, the appellants applied for a licence to quarry Lot 132. This application was similarly rejected. Thereafter nothing else was done by the appellants with Lot 132.

Pursuant to the relevant Notification No 2108, the government acquired the subject land on 11 June 1993.

At the inquiry convened under s 10 of the Land Acquisition Act (Cap 152) (`the LAA`), the appellants made a claim for $27,593,000 as compensation for the acquisition of the subject land. They did not however produce any valuation report in support thereof. Having considered the appellant`s claim and the Chief Valuer`s advice, the Collector on 19 July 1994 awarded a sum of $3,950,900 (or $3.15 psm) to the appellants as compensation.

The appellants appealed to the Land Appeals Board against the Collector`s award. Before the Board, their claim was raised to $32,497,296. After hearing witnesses and arguments from both sides, the Board increased the amount awarded to $5.2m (or $4.15 psm).

The hearing before the Board centred on only one main issue of contention between the parties, that is, the question of the proper method of valuation of the subject land. It was not disputed that, according to s 33(1)(i)(B) of the LAA, the relevant statutory date for assessing the market value of the subject land was 1 January 1992. What the parties could not agree upon was the proper method of valuation to be adopted in respect of the subject land. Before the Board, the following two opposing methods of valuation were put forward by the appellants and the Collector respectively:

A ***The appellant`s method of valuation***

The appellant`s valuer was one Low Ser Seah, the managing director of Cosmo Property Consultants Pte Ltd. He was a qualified valuer of some 29 years` standing.

Low`s method of valuing the subject land involved the comparison of the psm price awarded for the subject land against that awarded for other pieces of land on Pulau Ubin which were likewise compulsorily acquired under the same Notification. The awards given for these other parcels of land were calculated based on unit prices ranging from $18.54 psm to $22 psm, the lower unit prices being for interior lands and the higher ones for lands with sea frontages. It was accepted however that these other pieces of land were significantly smaller in size as compared to the subject land, and that the awards given were on the basis that those lands would be acquired with vacant possession.

Nevertheless, the following valuation of $32,497,296 was submitted by Low:

Rural Zone					
Area	:	1,210,752 sqm [commat] $23 psm	-	$	27,847,296
(with vacant possession)					
Mineral Workings Zone					
Area	:	43,500 sqm [commat] $120 psm	-	$	5,220,000
(with vacant possession)					
Less	:	Compensation to 38 squatters at $15,000 each	-	$	570,000
Final Valuation of the Land as at 1 January 1992	-	$	32,497,296		
(reflecting an average of $25.91 psm subject to existing tenancies)					

B ***The Collector`s method of valuation***

The Collector`s valuation of the subject land was put forth by one Ms Chua Beng Ee, a Senior Valuer in the Property Valuation & Assessment Division of the Inland Revenue Authority of Singapore.

Chua`s valuation report referred firstly to the transaction history between end-1989 and mid-1993 of various small plots of rural land on Pulau Ubin. The evidence revealed a unit price ranging from $7.53 psm to $40.19 psm. Chua noted however that these lands were some 50 to 150 times smaller in size than the subject land and were all sold with vacant possession. Moreover, much of the subject land was also covered with swamps. Due to these differences, Chua opined that the unit prices of the other pieces of land could not be used as benchmarks against which the true market value of the subject land was to be derived.

Chua then referred to the transaction history of the subject land (and Lot 171) itself, which

chronology of events has already been alluded to earlier in this judgment. Chua formed the opinion that the two sale transactions involving the subject land prior to 1 January 1992 were the best evidence of the true market value of the land. The only adjustments which needed to be made were for the rise in value of the subject land from January 1990 (ie the time when the appellants purchased the land from Swee) to 1 January 1992 (ie when the land was statutorily acquired), and for the exclusion of redevelopment potential.

Chua arrived at her valuation of $3,950,900 as follows:

Price of Lot 132 in January 1990	-	$	4,000,000
Less: redevelopment potential	-	($500,000)	
Net Value of Lot 132 in January 1990	-	$	3,500,000
Value of subject land in January 1990	-	$	3,303,700
Add: increase in value (from 1990 to 1992) based on property price index (or PPI) for mainland Singapore [commat] 18.5%			
Final Valuation of subject land as at 1 January 1992	-	$ 3,950,900	
	(after rounding-off to $3.15 psm)		

The Board`s decision

In essence, the Board accepted Chua`s valuation over Low`s. It found that the subject land had to be valued as a whole on an encumbered basis. Low`s valuation was rejected as the comparison with the various settled awards for the other parcels of land on Pulau Ubin was not justified given the differences in size, terrain and encumbrances. The primary features of distinction in the subject land as highlighted by the Board included its huge physical size, the fact that nearly 20% of it was covered with swamps and that it was heavily encumbered with 62 huts, five temples and three restaurants. Making the relevant adjustments to take into account these differences would presumably be too onerous an exercise, resulting in huge margins of error. As such, it was found that Chua`s approach of analysing the transaction history of the subject land itself was a more appropriate and accurate method of valuation in the circumstances. Two adjustments however were made to Chua`s valuation. First, the Board found that the deduction of $500,000 by Chua in valuing the land as at 12 January 1990 was not justified as the transaction with Swee was an open market one conducted at arms length. Next, the Board also found that the PPI of 18.5% used by Chua was inappropriate as the PPI was an analysis of real property sales transactions in mainland Singapore. In the Board`s opinion, land situated on Pulau Ubin was of a very different character. Upon careful deliberation, the Board exercising its best judgment, concluded that a 30% increase in the value of

the land, transacted at $4m in January 1990 was fair and reasonable. Thus, a sum of $5.2m was awarded by the Board.

The appeal

Before us, the appellants abandoned their claim for over $32m and instead claimed compensation in the region of around $15m (or $12.33 psm) only. In support of this however, they sought to advance generally the same argument which they did before the Board, ie that the best method for determining the market value of the subject land was to review both, the general trend of price increases for all property transactions on Pulau Ubin between the period 1985 to 1992, and the awards made for the other parcels of land acquired by the government under the same Notification. They contended that Chua`s method of valuation, ie that of examining the transaction history of the subject land itself, should not have been accepted by the Board.

The respondent objected to the institution of the appeal on the ground that it did not concern a question of law. In this connection, our attention was drawn to s 29 of the LAA which provides, inter alia, as follows:

> *(1) Subject to this section, the decision of the Board shall be final.*
>
> *(2) In any case in which the award, as determined by the Board (excluding the amount of any costs awarded) exceeds $5,000, the appellant or the Collector may appeal to the Court of Appeal from the decision of the Board upon* ***any question of law*** *. [Emphasis added.]*

We agreed with counsel for the respondent. It was clear to us that the only question raised in this appeal was that of the proper method of valuation of the subject land. While this may safely be regarded as a question of quantum or a question of fact, there was no doubt that it was certainly not a question of law. In the English case of **Duke of Buccleuch v IRC** [1965] 3 WLR 977, a case cited with approval in **Alagappa Chettiar v Collector of Land Revenue, Kuala Lumpur** [1968] 1 MLJ 243 and which concerned the valuation of real property for estate duty purposes, it was said by Danckwerts LJ that the best price which could hypothetically have been obtained by the best reasonable method at the time of the deceased`s death was a pure question of fact. His Lordship remarked at p 992A of the judgment:

> *[t]hat seems to be to be a question of fact for the tribunal which can only be ascertained on expert evidence. It is not really a matter of law at all.*

In our opinion, the above statement applied with full force to the case at hand. Section 29(2) of the LAA was amended in 1966 to restrict the right of appeals from awards made by the Board. Although the reasons for this change are not documented in the published Parliamentary Debates, it is not difficult to surmise that Parliament`s intention must have been to preserve the finality of awards given by the Board in matters of compensation. Such a move was indeed salutary, because it recognises that the Board, being comprised of experienced and highly-qualified professionals in the field of land valuation (the Board is made up of the Commissioner of Appeals and two assessors who are selected from a panel of members appointed by the Minister), is the best tribunal to decide on matters of valuation and for determining the true market value of land. It is beyond question that land

valuation is a highly-specialised and complex subject necessitating expert study. It is an area in which judges are neither well-equipped nor competent to deal with. As a result, Parliament has deemed it fit to remove questions of the proper method of valuation from the realm of the courts. Taking the present case for example, two diametrically-opposing methods of valuing the subject land were placed before us and we were asked to choose between them. In such a case, we found it difficult to see how the Court of Appeal is in a better position than the Board to rule on the issue when judges are neither trained nor tutored in real estate valuation. Certainly where there is a question of law involved, the highest court of the land would be more than competent and indeed even duty-bound to rule on the issue and to correct or clarify any principle of law applied by the inferior tribunal below. Indeed in such cases, it would be the duty of the Court of Appeal to declare principles of law authoritatively in order that they may be confidently applied by lower quasi-judicial or judicial bodies in future. No such principle of law, however, was raised in the present case. The question of the proper method of land valuation involves detailed analyses of market trends, comparisons between different types of land and their locality and a whole host of other complex variables which, in our view, are more suited to be resolved by experts in the field itself. As such, we had no doubt that the Board was the most appropriate final arbiter of the matter in this case.

Support for the view that questions of quantum only are not questions of law can be found in the Select Committee Report on the proposed amendments to the Land Acquisition Act in 1966. A large part of the debate at that time sprung from the impliedly agreed assumption that the curtailment of the right of appeal meant that the Board`s decision as far as quantum of the award was concerned was final. Despite the recommendations of some members of the Select Committee that the words `question of law` in cl 29 of the amendment bill be deleted, this suggestion was not adopted in the final report of the Committee which was presented to Parliament. As such, to have allowed the appellants to proceed with the appeal in the instant case when the only question raised herein related to the amount of compensation awarded not only ran counter to Parliament`s intention but would also have the effect of rendering the amendment to s 29 completely superfluous.

We found most of the cases cited by the appellants to be unhelpful. In particular, many of them emanated from Malaysia where a different regime existed, at least up until 1997, in respect of challenges from awards made by the Collector or the Land Administrator. We do not think it is necessary to describe in detail the appeal procedures which pertain in Malaysia. Suffice it to say that both the Malaysian Land Acquisition Act 1960 (on which the older cases were based) and the Land Acquisition Act (1992 Rev Ed) (on which the later cases are based) do not provide for appeals to a Land Appeals Board. Instead, s 36 of both Acts provides for a regime by which the Collector or Land Administrator may refer to the High Court any question as to, inter alia, the apportionment of compensation for any right or interest in land. As for an aggrieved land owner, he may apply to the High Court under s 37 raising an objection as to `the amount of the compensation`. It has been stated that the proceedings before the High Court are not in the nature of an appeal from the Collector`s award, but are by way of original hearing. The onus thus lies upon the applicant to satisfy the court that the amount of compensation awarded was inadequate. The judge, assisted by the assessors, makes his own estimate of the amount of compensation upon the evidence adduced before him: see **Collector of Land Revenue v Alagappa Chettiar** [1971] 1 MLJ 43 . Any appeal from the decision of the High Court was made to the Federal Court (under the 1960 Act) or to the Supreme Court (under the 1992 Act) as provided for in s 49 of both Acts. For our purposes, what is significant is that under s 49 of the Malaysian statute, there is no limitation or restriction of the right of appeal to questions of law only. In fact, the marginal note to s 49 states specifically that the section is concerned with `[a]ppeal[s] from decision[s] as to ***compensation*** `. As such, the Malaysian authorities relied on by the appellants in this case must be viewed at in the light of the different statutory regime which exists under the land acquisition legislation in Malaysia.

Mr Jimmy Yim SC for the appellants then sought to support his contention that the instant appeal did in fact concern a question of law by quoting the following phrase from the headnote of the English case of ***Duke of Buccleuch v IRC*** (supra):

> *... that the Lands Tribunal had not erred in law...*

With respect, we could not agree with counsel`s argument. What he had done was to pluck a singular phrase from the headnote of a long and complicated case and then seek to interpret it out of its proper context. It will be seen that the phrase as used in the headnote was really one made with reference to the interpretation by the English Lands Tribunal of various provisions in the UK Finance Act 1894 and the UK Finance (1909-1910) Act. More specifically, it was a phrase made in response to the trustees` argument in that case that the revenue commissioners had not complied with certain statutory requirements. The case before us, on the other hand, concerned no such issue of statutory interpretation. As such, the reliance by senior counsel on a solitary phrase culled from the headnote of a case involving very different facts was entirely misconceived.

While it is not possible to lay down the precise scope of what qualifies as a question of law, the law reports are nevertheless replete with certain trite illustrations of such questions. Obvious examples include questions of the interpretation or construction of a statute: see **Trustees of the Kheng Chiu Tin Hou Kong and Burial Ground v Collector of Land Revenue (HDB)** [1992] 1 SLR 425 and **Collector of Land Revenue v Ang Thian Soo** [1990] SLR 11 [1990] 1 MLJ 327 ; cases in which there is a conflict of judicial authority; and cases which involve some clear misdirection or misapplication of a legal principle. In ***Alagappa Chettiar v Collector of Land Revenue*** (supra), it was specifically held by the Federal Court of Malaysia that the ascertainment of the market value of a piece of land is a question of fact for the tribunal which can only be ascertained on expert evidence. Although the decision of the Federal Court was eventually reversed by the Privy Council on appeal, no criticism was made of this statement of principle. If anything, it was implicitly accepted by the Privy Council that questions of valuation are questions of fact, as a result of which it held that an appellate court should be slow to interfere with awards given by a lower court. Any evidence affecting or otherwise having a bearing on the choice of method should thus be adduced before the tribunal below, and not on appeal. If there are cases in the law reports in which questions of valuation appear to have been considered on appeal, one can only surmise that the reason must have been because no objection was raised by the respondents in those cases, or that the restriction in s 29 was not brought to the court`s attention. In any event, Mr Yim SC failed to cite to us any local authority in which an appellate court had assumed jurisdiction to adjudicate on a question concerning the proper method of valuation. In the absence of such authority, we had no doubt that the appellants were not entitled to bring this appeal and we accordingly upheld the preliminary objection and dismissed the appeal without hearing the parties on the substantive merits of their respective cases.

Outcome:

Appeal dismissed.