IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 19

Originating Summons No 397 of 2015

Between

Ahmad Kasim Bin Adam
(as administrator of the estate of
Adam Bin Haji Anwar, deceased,
and in his own personal capacity)

… *Applicant*

And

(1) Moona Esmail Tamby Merican
s/o Mohamed Ganse
(2) Ahna Cheena Kana Pana Raman
Chitty s/o Koopan Chitty
(3) Singapore Land Authority
(4) Attorney-General

… *Respondents*

GROUNDS OF DECISION

[Land] — [Adverse possession]
[Land] — [Compulsory acquisition]

Version No 1: 27 Oct 2020 (22:40 hrs)

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Ahmad Kasim Bin Adam

v

Moona Esmail Tamby Merican s/o Mohamed Ganse and others

[2017] SGHC 19

High Court — Originating Summons No 397 of 2015
Foo Chee Hock JC
29 September, 15 December 2016; 16 December 2016

13 February 2017

Foo Chee Hock JC:

Introduction

1 In the present Originating Summons ("the OS"), the applicant applied for a declaration that he and/or his father had, by way of adverse possession, acquired title to Lot 28W Mukim 27 ("the Land").[1] He also applied for a declaration that the award under s 10 of the Land Acquisition Act (Cap 152, 1985 Rev Ed) ("LAA") dated 18 March 1988 ("the Award") "was invalid and to be set aside being null and void".[2] The applicant made the

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1 The OS at paras 1–2.
2 The OS at para 4.

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claims in his personal capacity as well as in his capacity as the administrator of his father's estate. On 16 December 2016, I dismissed the OS. The applicant has now appealed against my decision.

Background facts

2 This case concerned a piece of valuable real estate in the eastern part of Singapore. The Land had an approximate area of 9,636.6 m^2, with most of the area used as burial grounds.[3] The remaining area was occupied by a house alongside some structures wherein the applicant and his family allegedly resided from 1950 ("the Palm Drive House").[4]

3 With a long history stretching back to 1888, the Land was initially acquired by the first respondent, one Moona Esmail Tamby Merican s/o Mohamed Ganse. In the same year, the Land was mortgaged to the second respondent, Ahna Cheena Kana Pana Raman Chitty s/o Koopan Chitty. There were no other recorded transactions in relation to the Land until it was formally vested in the State in September 1988.[5]

4 On 27 November 1987, Notification No 4554 was published in the Government Gazette declaring that the Land was needed for

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3 Teo Soo Yan's Affidavit dated 24 August 2016 at para 17.

4 Teo Soo Yan's Affidavit dated 24 August 2016 at para 17; Ahmad Kasim's Affidavit dated 28 April 2015 at para 8.4.

5 Teo Soo Yan's Affidavit dated 24 August 2016 at para 9.

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a public purpose.[6] Under the Master Plan 1980, the entirety of the Land was "zoned for cemetery use".[7] On 18 March 1988, the Collector of Land Revenue ("the Collector") awarded a sum of $18,800 as compensation to the first and second respondents.[8] However, neither of them collected the compensation. Subsequently, pursuant to an Order of Court dated 20 June 1988, the Collector paid the sum into Court.[9] On 12 September 1988, the title of the Land was vested in the State.[10] Throughout the entire time, neither the applicant nor his father claimed to have title to the Land by adverse possession or sought any compensation.[11]

5 In 2009, the graves located on the Land were exhumed.[12] This prompted the applicant to make some enquiries that ultimately led him to discover that the Land "had already been acquired by the government in 1988".[13] Sometime around September 2009, the applicant was asked by the Singapore Land Authority ("SLA") to vacate the Land.[14] By 30 June 2016, vacant possession of the remaining Palm Drive House was delivered to the SLA.[15]

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6 Teo Soo Yan's Affidavit dated 24 August 2016 at p 67.
7 Teo Soo Yan's Affidavit dated 24 August 2016 at para 20.
8 Teo Soo Yan's Affidavit dated 24 August 2016 at para 20.
9 Teo Soo Yan's Affidavit dated 24 August 2016 at para 20.
10 Teo Soo Yan's Affidavit dated 24 August 2016 at para 21.
11 Teo Soo Yan's Affidavit dated 24 August 2016 at para 21.
12 Teo Soo Yan's Affidavit dated 24 August 2016 at para 22.
13 Ahmad Kasim's Affidavit dated 28 April 2015 at para 12.
14 Ahmad Kasim's Affidavit dated 28 April 2015 at para 12.1.
15 Teo Soo Yan's Affidavit dated 24 August 2016 at para 28.

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6 I now turn to the facts on which the applicant based his claim. According to the applicant, in the early 1950s, the Village Head of Kampong Siglap allowed his grandfather to build a house on the Land and reside there permanently.[16] The applicant's grandfather was also tasked by the Village Head to maintain the "graveyards" on the Land.[17]

7 The applicant claimed that prior to 2009, nobody had interrupted or questioned his and his family's occupation of the Land.[18] In support of this, he averred that he and his family continued paying the property tax, utility bills and television licence fees even after the Land was vested in the State in 1988.[19] In this connection, the Inland Revenue Authority of Singapore refunded the property tax collected after September 1988 upon discovering that the tax in respect of the Land was still being paid.[20]

8 On 30 April 2015, the applicant filed the OS. The first and second respondents were deceased, and were not represented in the present proceedings. The third respondent was the SLA. The fourth respondent, the Attorney-General, was joined as the representative of the Government by an Order of Court dated 18 May 2016.[21]

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16 Ahmad Kasim's Affidavit dated 28 April 2015 at para 10.1.
17 Ahmad Kasim's Affidavit dated 28 April 2015 at paras 10.1 and 10.2.
18 Ahmad Kasim's Affidavit dated 28 April 2015 at para 14.
19 Ahmad Kasim's Affidavit dated 28 April 2015 at para 12.
20 Ahmad Kasim's Affidavit dated 28 April 2015 at pp 54–55.
21 Teo Soo Yan's Affidavit dated 24 August 2016 at para 16.

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The parties' cases

9 There were two parts to the applicant's case.[22] First, it was argued that the applicant and/or his father had obtained title to the Land by way of adverse possession before September 1988. Second, the applicant submitted that the Award ought to be set aside for want of compliance with the provisions under the LAA, especially the service requirements.

10 The third and fourth respondents averred that the elements of adverse possession were not satisfied because the applicant and/or his father did not have physical possession of the Land[23] and did not intend to exclude the world at large from the Land.[24] In relation to the Award, the third and fourth respondents submitted that the applicant had mistakenly relied on the LAA (*ie*, the current version of the Act). They contended that the applicable legislation was the Act as amended up to 27 November 1987 ("1987 LAA"), the date of the declaration in the Government Gazette. They argued that the Collector had complied with the requirements of the 1987 LAA and that the Award must stand.[25]

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22 Applicant Bundle of Submission dated 27 September 2016 at pp 51–52, paras 15.1–15.2.

23 3rd and 4th Respondents' Submissions dated 27 September 2016 at paras 47–51.

24 3rd and 4th Respondents' Submissions dated 27 September 2016 at paras 56–58.

25 3rd and 4th Respondents' Supplementary Submissions dated 29 September 2016 at para 6.

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Issues to be determined

11 I found that there were two threshold issues, the determination of which would dispose of the OS:

(a) whether the applicant and/or his father had obtained title to the Land by way of adverse possession before the compulsory acquisition was completed in 1988;

(b) if the applicant and/or his father had obtained title to the Land, whether the Award could be set aside for want of compliance with the applicable legislation.

12 I will address both issues in turn. In my judgment, the applicant could neither satisfy the elements of adverse possession nor show that the Award could be set aside.

Adverse possession

13 The applicant had the burden to prove that title had accrued to him and/or his father by adverse possession: see *Lee Martin and another v Wama bte Buang* [1994] 2 SLR(R) 467 ("*Lee Martin*") at [15]. In this regard, the relevant principles to establish adverse possession could be briefly summarised as follows:

(a) First, the adverse possessor must establish that he had been in factual possession of the land for at least 12

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continuous years: see *Chua June Ching Michelle v Chai Hoi Tong and others* [2011] 4 SLR 418 at [9]–[10].

(b) Second, the possession of the land must be adverse to the owner *ie*, the adverse possessor must have acted inconsistently with the owner's intended use of the land: see *Tan Kee (suing as an administrator of the estate of Poh Wong, deceased and in her own personal capacity) and Others v The Titular Roman Catholic Archbishop of Singapore* [1997] SGHC 281 ("*Tan Kee*") at [47] and *Re Lot 114-69 Mukim 22, Singapore and another action* [2001] 1 SLR(R) 811 at [37] and [53].

(c) Third, the adverse possessor must have intended to exclude the world at large from the land: see *Lee Martin* at [16] and *Moulmein Development Pte Ltd v Teo Teck Guan and another* [1998] 1 SLR(R) 195 ("*Moulmein Development*") at [20].

(d) Fourth, blatant enclosure and inhabitation of the land were the strongest evidence of adverse possession. Although these were not the only ways to establish adverse possession, the court generally expected the adverse possessor to "raise the flag of hostile possession by occupation without permission and … keep it flying until it ripens into a title by adverse possession": see *Tan Kee* at [47].

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14 Distilling the above principles for practical application, there were two main elements that the applicant must establish: (i) factual possession of the Land (*ie*, *factum possidendi*) and (ii) intention to possess the Land (*ie*, *animus possidendi*). On the evidence presented to me, however, the applicant failed to establish both elements.

15 The applicant faced multiple evidentiary hurdles in his attempt to establish *factum possidendi*. In the OS, he claimed that he and/or his father had adversely acquired all the right, title and possession of "the *whole plot* of [the Land]" [emphasis added].[26] However, the major portion of the Land was a cemetery that members of the public could freely access, and the Palm Drive House occupied only a small area.[27] The applicant could not show in any meaningful way that they possessed the entirety of the Land. Faced with this conundrum, counsel for the applicant clarified orally during the second hearing that the applicant was only claiming the area comprising the Palm Drive House.[28] No application was taken out to amend the OS, but this was ultimately immaterial because the applicant also failed to show that he and/or his father was in possession of the Palm Drive House for 12 continuous years.

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26 The OS at paras 1 and 2.

27 3rd and 4th Respondents' Submissions dated 27 September 2016 at para 49; Teo Soo Yan's Affidavit dated 24 August 2016 at para 61.

28 Notes of Proceedings in Chambers dated 15 December 2016 at p 2, lines 4–9.

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16 To begin with, I agreed with the third and fourth respondents that there were a number of inconsistencies in the applicant's evidence which undermined his case.[29] For instance, the applicant claimed that his grandfather and father lived in the Palm Drive House since 1950.[30] But when the applicant was born on 9 October 1950, his birth certificate recorded "497 Woo Mon Chew Road" as his and his father's address.[31] Similarly, although the applicant asserted that he lived at the Palm Drive House with his first wife from 1973 to 1980,[32] the documentary evidence suggested otherwise. The birth certificate of his daughter, who was born on 10 March 1977, stated the applicant's address as "34 F, Jalan Murai off Lim Chu Kang Road 17 M/S".[33]

17 Given the fragmentary and inconsistent nature of the applicant's evidence, it was unsurprising that he could not even definitively identify the point at which his and/or his father's alleged adverse possession started. At the first hearing, counsel for the applicant initially submitted that the adverse possession started in 1955.[34] Then he changed his position and asserted that it commenced in 1961.[35] Eventually, at the second hearing, counsel

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29 3rd and 4th Respondents' Submissions dated 27 September 2016 at para 47.

30 Ahmad Kasim's Affidavit dated 28 April 2015 at para 8.4.

31 Ahmad Kasim's Affidavit dated 28 April 2015 at p 72.

32 Answer to Interrogatories dated 14 January 2016 in Applicant Bundle of Pleadings at p 136, para 4(b).

33 Teo Soo Yan's Affidavit dated 24 August 2016 at p 57.

34 Notes of Proceedings in Chambers dated 29 September 2016 at p 1, lines 34–35.

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settled on the years from 1961 to 1964.[36] To say the least, the applicant's inability to crystallise his case and pinpoint when the adverse possession commenced demonstrated the inherent weakness of his case.

18 There was also the fact that the applicant's father was not living at the Palm Drive House from 19 May 1964 to 11 November 1970 because he was incarcerated in Changi Prison.[37] The applicant contended that physical possession was not necessary for *factum possidendi*:[38] see *Soon Peng Yam and another (trustees of the Chinese Swimming Club) v Maimon bte Ahmad* [1995] 1 SLR(R) 279 (at [14]–[15]), but failed to show how the present facts could trigger the relevant principle or how title could even <u>*begin*</u> to accrue when the applicant's father was in jail.

19 In the end, I found that the applicant failed to establish the requirement of *factum possidendi*. The third and fourth respondents also argued that the applicant's father could not, in law, have acquired any interest in the Land under the Residential Property Act (Cap 274, 2009 Rev Ed) because he was Stateless. But given the paucity of evidence that the applicant's father was even in

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35 Notes of Proceedings in Chambers dated 29 September 2016 at p 2, lines 27–31.

36 Notes of Proceedings in Chambers dated 15 December 2016 at p 1, lines 34–37; Answer to Interrogatories dated 14 January 2016 in Applicant Bundle of Pleadings at pp 137–138, paras 4(1)–(2).

37 Teo Soo Yan's Affidavit dated 24 August 2016 at para 40.

38 Applicant's Skeletal Reply dated 15 December 2016 at p 5.

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continuous possession of the Land, it was unnecessary for me to decide on this point.

20 In any event, the other leg on which the purported adverse possession stood was equally weak. The applicant was hard put to prove that he and/or his father had the necessary *animus possidendi*. In *Moulmein Development*, the Court of Appeal at [20] stated the following (citing *Powell v McFarlane* (1977) 38 P & CR 452 at 471):

> … *animus possidendi* involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, *so far as is reasonably practicable and so far as the processes of the law will allow*.
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> [emphasis in original]

Therefore, in order to succeed, the applicant needed to show that he and/or his father had the intention to exclude the world at large from the Land.

21 However, the applicant failed miserably on this aspect. Contrary to the applicant's contentions, the evidence clearly established that he and/or his father did not intend to exclude the world at large.[39] This was nowhere clearer than in a letter dated 5 February 2010 that the applicant sent to Mr Chan Soo Sen, then Member of Parliament for Joo Chiat Single Member Constituency.[40]

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39 3rd and 4th Respondents' Submissions dated 27 September 2016 at para 21.

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The salient parts of the letter set out below showed the applicant's state of mind:[41]

> … my family and I only know that the land was waqf land and we are entrusted and duty bound to take care of the land without any reward, except being allowed to build a simple house on that land. We *never wanted to impose any claim on the land as we know this is waqf land.* …we *will not put a claim to the land we believe is bequeathed for public use*.
>
> [emphasis added]

22 In the same letter, the applicant again stressed that he and his family laid no claim to the Land, stating that they "never registered interest nor claimed ownership by adverse possession and [they] never regretted it *as [they] never owned that land*" [emphasis added].[42] Instead, they merely saw themselves as caretakers of the Land which, it must be emphasised, they believed was for "public use". Taken in its totality, the letter clearly demonstrated that the applicant and his father did not intend to exclude the world at large. Accordingly, I found that both the applicant and his father did not have the requisite *animus possidendi* to establish adverse possession. For completeness, I should add that the

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40 Teo Soo Yan's Affidavit dated 24 August 2016 at pp 99–101. The letter was erroneously dated 5 February *2009* instead of *2010*, but the error was merely typographical as both parties accepted that it should be dated 5 February 2010 (see Teo Soo Yan's Affidavit dated 24 August 2016 at para 22).

41 Teo Soo Yan's Affidavit dated 24 August 2016 at p 100.

42 Teo Soo Yan's Affidavit dated 24 August 2016 at p 101.

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applicant's affidavit stated that he and his father were mistaken in their belief that the Land was waqf land,[43] and counsel for the applicant tried to use this in support of the applicant's case.[44] However, I agreed with the third and fourth respondents that this was immaterial to the conclusion that there was no *animus possidendi*.[45] Simply put, it did not follow from the fact that the applicant and his father were mistaken as to the Land being waqf land that they had therefore intended to exclude the world at large. The fact remained that from 1950 to 2010, the applicant and his father did not intend to exclude the world at large from the Land.

The Award

23 The foregoing was sufficient to dispose of the matter. But even if the applicant could establish adverse possession, he still could not surmount the hurdle of setting aside the Award.

24 The applicant attacked the Award on the basis that the Collector failed to comply with the LAA. He argued that the acquisition notice ("the Notice") and the Award were not brought to the attention of the applicant and/or his father, both of whom would have constituted "person[s] interested" under s 2(1) of the LAA had they acquired title by adverse possession.[46] Principally,

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43 Ahmad Kasim's Affidavit dated 28 April 2015 at para 13.

44 Notes of Proceedings in Chambers dated 29 September 2016 at p 3, lines 10–12.

45 3rd and 4th Respondents' Submissions dated 27 September 2016 at para 57.

46 Applicant's Skeletal Reply dated 15 December 2016 at paras

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it was alleged that the Collector did not comply with the LAA by failing to serve the Notice and the Award personally on the applicant and/or his father.[47] Further, it was submitted that the Collector ought to have placed the Notice and the Award on the Palm Drive House because it would have been "the most conspicuous place or structure on the [L]and". [48]

25 However, there were many fundamental flaws in the applicant's case, both legal and evidentiary. Starting with the law, the applicant wrongly relied on the LAA in his submissions.[49] Given that the Land was declared in the Government Gazette as being required for a public purpose on 27 November 1987, I agreed with the third and fourth respondents that the applicable legislation was the 1987 LAA.[50] This meant that some of the applicant's contentions were simply erroneous,[51] while those set out above must be read subject to the 1987 LAA.

12.e–12.f and 14.a.

47 Applicant Bundle of Submission dated 27 September 2016 at paras 10.4(ii) and 10.5.

48 Applicant Bundle of Submission dated 27 September 2016 at paras 10.4(iv), 10.7, and 10.8; and Applicant's Skeletal Reply dated 15 December 2016 at paras 14.c and 14.g.

49 See *eg*, Applicant Bundle of Submission dated 27 September 2016 at paras 10.4–10.8.

50 3rd and 4th Respondents' Supplementary Submissions dated 29 September 2016 at paras 3 and 4.

51 See *eg*, Applicant Bundle of Submission dated 27 September 2016 at paras 10.4(i) and 10.4(ii).

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26 With the 1987 LAA in mind, I was satisfied that the Collector had duly complied with all the relevant provisions under the law. To this end, I first set out briefly the compulsory acquisition scheme and relevant requirements under the 1987 LAA:[52]

(a) First, a declaration under s 5(1) that the land was required for a specific purpose must be published in the Government Gazette.

(b) Second, as required under ss 8(1) and 8(2), an acquisition notice was to be posted on or near the relevant land, and the notice shall be served on "all persons known or believed to be interested in the land".

(c) Third, if such persons could not be found, then s 45(3) provided that it sufficed (for present purposes) to fix a copy of the notice "in *some conspicuous place* in the office of the Collector and also on *some conspicuous part of the land* to be acquired" [emphasis added].

(d) Fourth, once an award was made under s 10, s 11 provided that the Collector's award was to be filed in his office and a copy thereof was to be served on "all persons interested *provided that their addresses can be ascertained*

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52 3rd and 4th Respondents' Supplementary Submissions dated 29 September 2016 at para 5.

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> *after reasonable inquiry* when the award is made" [emphasis added].

27 Proceeding to the present facts, as detailed above at [4], a declaration was made in the Government Gazette on 27 November 1987 that the Land was needed for a public purpose. Further, up to the completion of the compulsory acquisition, the only recorded transactions with respect to the Land related to the first and second respondents as owner and mortgagee respectively.

28 The Collector's affidavit filed on 20 June 1988[53] stated expressly that the Notice under s 8 of the 1987 LAA was "duly posted" on the Land on 22 January 1988 seeking persons interested to appear at the office of the Collector on 3 March 1988 to make their claims in respect of the Land. The Notice was not served on the first and second respondents because they could not be found. Thus, on 23 January 1988, the Notice was posted on the Land Office Notice Board. The affidavit further stated that nobody attended the inquiry held on 3 March 1988. Subsequently, the Collector awarded $18,800.00 as compensation for the Land on 16 March 1988. But the Award could not be served on the first and second respondents, and it was instead posted on the Land Office Notice Board on 18 March 1988.

29 In view of the Collector's affidavit, there was no reason, nor did the applicant provide any, for me to believe that the Notice had

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53 Teo Soo Yan's Affidavit dated 24 August 2016 at pp 77–80.

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not been posted on some conspicuous part of the Land. Illustration (*e*) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) allowed the Court to presume that "official acts have been regularly performed". The burden was therefore on the applicant to rebut the presumption. However, he failed to do so. The applicant merely alleged that there was no evidence of the Notice having been posted on the Land, and that the Collector ought to have made an affidavit of service.[54] Given the above, I found that counsel for the third and fourth respondents had satisfactorily explained that a formal affidavit of service was not made because there was no dispute at that time.[55]

30 Having found that the Notice was regularly served, which was the key to answering the applicant's contentions, the applicant's complaints that there was no reasonable inquiry as to his and his father's addresses and no personal service of the Award on them, were unmeritorious. As submitted by the third and fourth respondents, since the applicant and his father never made a claim on the Land or for compensation at the material time, there was no requirement to serve the Award on the applicant and his father.[56] Accordingly, the applicant failed to show any grounds for setting

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54 Applicant Bundle of Submission dated 27 September 2016 at pp 39–40, paras 10.4(iv)–10.4(v).

55 Notes of Proceedings in Chambers dated 15 December 2016 at p 4, lines 9–10.

56 3rd and 4th Respondents' Supplementary Submissions dated 29 September 2016 at para 7(f).

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aside the Award. For that matter, there was also no requirement in the 1987 LAA to post the Award on the Land.

31 Lastly, s 11(1) of the 1987 LAA provided as follows:

> **Award of Collector when to be final**
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> The Collector's award shall be filed in his office and shall, except as hereinafter provided, *be final and conclusive evidence as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not*, of the area and value of the land and the apportionment of the compensation among the persons interested.
>
> [emphasis added]

And as stated under s 53 of the 1987 LAA, no suit shall be brought to set aside the Award. Therefore, even if against all odds, the applicant could have come this far, he would have tripped and fallen at this hurdle.

Conclusion

32 In conclusion, I rejected the applicant's claim that he and/or his father had acquired title to the Land by way of adverse possession. In any event, the applicant failed to establish any grounds for setting aside the Award. In the premises, I dismissed the OS with costs to be paid by the applicant to the third and fourth respondents.

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Foo Chee Hock
Judicial Commissioner

Chishty Syed Ahmed Jamal (A C Syed & Partners) for the applicant;
The first and second respondents unrepresented;
Khoo Boo Jin and Leon Michael Ryan (Attorney-General's Chambers) for the third and fourth respondents.

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