IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 23

Civil Appeal No 4 of 2017

Between

Ahmad Kasim bin Adam
(suing as an Administrator of the estate of Adam bin Haji Anwar and in his own personal capacity)

… *Appellant*

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*

In the matter of Originating Summons No 397 of 2015

Between

Ahmad Kasim bin Adam
(suing as an Administrator of the estate of Adam bin Haji Anwar 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*

JUDGMENT

[Administrative Law] — [Remedies] — [Certiorari]
[Land] — [Adverse possession]
[Land] — [Compulsory acquisitions]

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Ahmad Kasim bin Adam (suing as an Administrator of the estate of Adam bin Haji Anwar and in his own personal capacity)
v
Moona Esmail Tamby Merican s/o Mohamed Ganse and others

[2019] SGCA 23

Court of Appeal — Civil Appeal No 4 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
16 August 2017; 6 August 2018

10 April 2019 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

1 This appeal concerns the compulsory acquisition of a piece of land in Bedok. At the material time, the land was known as Lot 28W of Mukim 27 ("the Land"). It was situated close to Upper East Coast Road, had an area of 9,636.6m^2 and had an entry from Palm Drive. Until 2009, most of the Land was used as a Muslim cemetery. Until 2016, there was also a house situated on the Land, occupied by members of the appellant's family ("the House"). The House most recently went by the address "14 Palm Drive" and at various times in the past had been known by other addresses such as "472-X Palm Drive", "8A Palm Drive" and "10A Palm Drive". The Land was gazetted for compulsory acquisition by the government in November 1987 and title to it vested in the State about ten months later.

2 At the time of the acquisition, the most recent traceable title to the Land showed that it belonged to the first respondent, one Moona Esmail Tamby Merican s/o Mohamed Ganse. He purchased the Land in 1888 and mortgaged it to the second respondent, one Ahna Cheena Kana Pana Raman Chitty s/o Koopan Chitty, the same year. Hereafter, we refer to the first and second respondents as "the paper owners". No other transactions in relation to the Land were lodged with the Registry of Deeds, and no other persons were known to the authorities as having any interest in the Land. On 18 March 1988, the Collector of Land Revenue ("the Collector") awarded a sum of $18,800 ("the Award") as compensation for the acquisition to the paper owners under s 10 of the Land Acquisition Act (Cap 152, 1985 Rev Ed) as the same was in force on 27 November 1987 ("the 1987 LAA"). As neither of them collected the Award, the Collector paid the sum into court.

3 The appellant, Ahmad Kasim bin Adam ("Mr Ahmad"), brought the proceedings from which the present appeal arose in his personal capacity and as the administrator of the estate of his late father, Adam bin Haji Anwar ("Mr Adam"). He claims that from the 1950s up to fairly recently, his family had lived in the House and occupied the Land as caretakers of the cemetery. They continued to live in the House even after 1988 without knowing that the Land had been acquired by the State. He seeks a declaration that he or Mr Adam had acquired title to the Land by adverse possession prior to the State's acquisition in 1988. He also asks that the Award made by the Collector in 1988 be set aside and a re-hearing for the assessment of compensation be ordered because the Award was made without notice to him or Mr Adam as the persons interested in the Land in 1988.

4 As efforts to locate the paper owners or, more accurately, their executors

or heirs, were not successful, they are represented in these proceedings by the Public Trustee for the purpose of service only. The paper owners took no part in these proceedings.

5 The third and fourth respondents are the Singapore Land Authority ("the SLA") and the Attorney-General ("the AG") (collectively "the Respondents"). The SLA is the statutory board that oversees the compulsory acquisition of land in Singapore. As the SLA was only established in 2001, the AG was joined as a respondent to represent the government in respect of events occurring before the establishment of the SLA. The Respondents contest Mr Ahmad's claim to title by adverse possession and his attempt to have the Award set aside.

Background

6 According to Mr Ahmad, his late grandfather, who was known as Haji Anwar, began residing on the Land sometime in the early 1950s. He cleared the dense vegetation on the Land so that it was fit for use as a Muslim cemetery. He was then entrusted with the care and maintenance of the cemetery and, in return, was given permission by the *penghulu* or headman of the village then known as Kampong Siglap which was located in the vicinity of the Land to "build a simple house for [the family's] permanent abode" on the Land. Haji Anwar built the House as a family home, and his son Mr Adam later expanded it as the family grew. According to Mr Ahmad, the family resided there undisturbed until 2009, oblivious to the government's acquisition in the intervening period.

The compulsory acquisition

7 The Land was gazetted for compulsory acquisition on 27 November 1987 on the basis that it was needed for the public purpose of general

development. At that time, the Land was zoned for "cemetery" use under the 1985 Master Plan promulgated by the Urban Redevelopment Authority.

8 A notice of acquisition ("the Notice") was posted on the Land on 22 January 1988 to announce that the Land was required by the government under the 1987 LAA. The Notice invited persons interested in the Land to appear at the Land Office before the Collector on 3 March 1988 to state the nature of their interest in the Land, and the amount and particulars of their claims to compensation. There is a handwritten notation, "Posted on Site", at the bottom of the Notice but it is not known precisely where on the Land it was posted. Mr Ahmad claims that his family was unaware of the Notice. A notice in similar terms was addressed to the paper owners and posted at the Land Office's notice board because they could not be traced. There is no record of any such notice having been sent to Mr Ahmad or Mr Adam.

9 No one attended the hearing before the Collector on 3 March 1988. The Collector made the Award in favour of the paper owners. On 20 June 1988, the Collector applied for and obtained an Order of Court allowing him to pay the sum of $18,800 into court. The basis for the application was that the offer of compensation could not be served on the paper owners because they could not be found. The Land formally vested in the State on 12 September 1988.

Events leading to the present proceedings

10 For the next 20 years, no attempts were made by the government to evict Mr Ahmad's family from the House. It appears that the government was not aware that Mr Ahmad's family was residing on State land. Mr Ahmad's family continued to pay property tax, utility bills and television licence fees in connection with the House until 2013. Sometime in 2009, Mr Ahmad noticed

that the graves on the Land were being exhumed. This prompted him to make inquiries and to search the land register, which led him to discover that the Land had been acquired by the government in 1988.

11 Feeling aggrieved that the Land had been acquired apparently without any notice or compensation to his family, Mr Ahmad wrote a letter, dated 5 February 2010, to one of the Members of Parliament overseeing his constituency ("the MP Letter"). In it, he stated as follows:

(a) Mr Ahmad's family had lived in the House for more than five decades since the mid-1950s. While Mr Ahmad had no personal knowledge of how the family came to live on the Land, he was told by his father that the Land was "*waqaf* land, to be used as a burial ground for Muslims" and that the family was "allowed to build a house on the land as [they would] not be paid for the upkeep of the cemetery and its vicinity". Mr Ahmad stated that his family "never registered interest nor claimed ownership by adverse possession and [they] never regretted it as [they] never owned [the Land]" because they understood the Land to be "bequeathed for public use".

(b) It was only when the burial grounds were being exhumed that Mr Ahmad discovered that the Land had been acquired by the government. About a week before he wrote the MP Letter, an officer from the SLA had informed Mr Ahmad that he was illegally occupying State land and asked him to vacate the premises.

(c) Although his family was "not challenging the government's right to the [premises]", they were upset that the government had not given them any notice of the acquisition all these years, only to now allege,

> out of the blue, that they were illegal occupants. They asked the government for "some form of gratuity payment for the efforts [they] had put in all these decades" in maintaining the Land at their own expense. They hoped that the government would show appreciation for their efforts by "giving [them] another house or some payment which [they] can use to buy another house".

12 On 8 February 2010, the MP Letter was forwarded to the SLA. While there was a discussion between the parties shortly thereafter, the SLA only formally replied to Mr Ahmad some two years later. Its letter of 9 July 2012 informed him that it would not be able to accede to his request for a replacement house or compensation, but that it was evaluating the possibility of an *ex gratia* payment.

13 On 22 November 2013, the SLA wrote to Mr Ahmad to reiterate that he was not entitled to remain in occupation of the Land or the House regardless of whether he was a "person interested" in the Land under the 1987 LAA because the Land had vested in the State. It indicated that it was prepared to offer Mr Ahmad an *ex gratia* payment of $17,882.05 to facilitate his relocation by 22 January 2014. If Mr Ahmad wished to continue occupying the Land, however, the SLA was willing to offer him a temporary occupation licence ("TOL") at a monthly fee starting at $77.20 for the first year, with a possibility of renewal on a yearly basis.

14 Mr Ahmad did not vacate the Land or accept the offer of a TOL. On 26 May 2014, the SLA gave Mr Ahmad notice that he had failed to vacate the Land and was therefore in "unauthorised and unlawful occupation of the Land".

He was given 28 days to vacate the Land. Following this, Mr Ahmad attempted to negotiate for more time to vacate the Land and for a higher *ex gratia* payment.

15 On 31 July 2014, Mr Ahmad's present solicitors, AC Syed & Partners ("AC Syed"), wrote to the SLA, alleging for the first time that the compulsory acquisition was carried out in breach of natural justice; that Mr Ahmad was a "rightful owner in possession of the land" and not a "trespasser"; that the SLA's offer of an *ex gratia* payment was unjustifiable; and that Mr Ahmad, as an "adverse possessory owner", was entitled to compensation assessed at the prevailing market rate.

16 On 17 September 2014, the AG responded to AC Syed, stating the government's position that there was no breach of natural justice in the execution of the compulsory acquisition; that Mr Ahmad could apply to court for the release of the $18,800 if he was of the view that he had a compensable interest as at September 1988; and that Mr Ahmad was not entitled to remain in occupation of the Land or to mount a claim of adverse possession. On 29 September 2014, the SLA wrote to Mr Ahmad to seek his cooperation to "quickly vacate the Land in compliance with the law". To facilitate an amicable settlement of the matter, the SLA made a "final offer" [emphasis in original] out of goodwill to increase the *ex gratia* payment to $36,000, payable by 15 November 2014, if Mr Ahmad vacated the Land by 15 October 2014.

17 On 3 October 2014, AC Syed replied to both the AG and the SLA. To the former, they maintained that notice of the compulsory acquisition had not been posted as required under the 1987 LAA, and that if such notice had been given, Mr Ahmad would have sought "timely legal advice" and "submit[ted] his claims as adverse owner of the Land". In reply to the latter, AC Syed rejected

the SLA's offer of $36,000. They contended that Mr Ahmad was "not just an occupant … [or] a trespasser" but an "adverse owner" and hence, the compensation due to him ought to be "reasonably based on the valuation of the Land as at the period of acquisition". However, Mr Ahmad was prepared to accept the SLA's earlier offer of a TOL.

18 The SLA thereafter issued three successive TOLs, pursuant to which Mr Ahmad was permitted to continue living in the House until 19 July 2016. Mr Ahmad redelivered vacant possession of the House to the SLA on 30 June 2016, shortly before the expiry of the third TOL. Possession of the House is therefore not in dispute in these proceedings.

The High Court application

19 On 22 April 2015, Mr Ahmad obtained letters of administration to Mr Adam's estate. On 30 April 2015, he filed Originating Summons No 397 of 2015 ("OS 397") to seek the following declarations:

> (a) that he, either personally or as the personal representative of Mr Adam's estate, as at 12 September 1988, had acquired title by adverse possession to the Land, including the House;
>
> (b) that all rights and titles of the paper owners be extinguished;
>
> (c) that the Award made under s 10 of the 1987 LAA was invalid and should be set aside as null and void; and
>
> (d) that prior to or as at the date of 27 November 1987, Mr Ahmad and/or Mr Adam was the person(s) interested in the Land including the House.

20 He also asked:

(a) that an order be made for a re-hearing pursuant to s 8 of the 1987 LAA for the assessment of compensation for the acquisition of the Land to which Mr Ahmad personally or as the personal representative of Mr Adam's estate should be entitled; and

(b) for such further or other relief as this court deems fit.

21 There is no prayer for a compensatory remedy. Mr Ahmad also does not seek to challenge the compulsory acquisition, but directs his challenge at the Award only.

22 The Respondents argued that neither Mr Ahmad nor Mr Adam had satisfied the requirements for adverse possession prior to 1988, and that there was no basis, in any event, to set aside the Award under the 1987 LAA.

Decision below

23 The Judicial Commissioner dismissed Mr Ahmad's application: see his grounds of decision at *Ahmad Kasim bin Adam v Moona Esmail Tamby Merican s/o Mohamed Ganse and others* [2017] SGHC 19 ("GD"). He held that Mr Ahmad had failed to show that he or Mr Adam had acquired title to the Land by way of adverse possession:

(a) First, he was not satisfied that Mr Ahmad had established factual possession over the entire area of the Land as claimed and for the requisite period of time. He found that Mr Ahmad could not have exclusively possessed the Land because the public could freely access the cemetery grounds: GD at [15]. Even if Mr Ahmad's claim were to

be confined to the area occupied by the House, Mr Ahmad had failed to establish continuous occupation for 12 years because there was evidence that he or Mr Adam lived at other addresses between 1950 and 1980, and he could not pinpoint when his or Mr Adam's adverse possession commenced: GD at [16]–[17].

(b) Second, Mr Ahmad and Mr Adam did not have the intention to exclude the world at large from the Land. This was evident from the MP Letter in which Mr Ahmad stated that his family thought the Land was *waqaf* land, never claimed ownership to it and would not lay claim to the land: GD at [21]–[22].

24 Even if Mr Ahmad could establish adverse possession, the Judicial Commissioner held that there was no basis for setting aside the Award. He rejected the contention that the Collector failed to comply with the procedural requirements under s 45(3) of the 1987 LAA. In particular, there was no reason to believe that the Notice had not been posted on some conspicuous part of the Land as was required under s 45(3) of the 1987 LAA: GD at [29]. Since neither Mr Ahmad nor Mr Adam had made a claim to the Land, the 1987 LAA did not require the Collector to serve the Award personally on them: GD at [30]. Finally, the Award could not be set aside because s 53 of the 1987 LAA provided that no suit shall be brought to set aside any award made thereunder: GD at [31]. Therefore, the Judicial Commissioner dismissed Mr Ahmad's application. Mr Ahmad's appeal against this decision is now before this court.

Parties' cases

25 We first heard the parties on 16 August 2017. At the end of the hearing, we shared our preliminary views with them and adjourned the hearing for them

to attempt to reach a resolution through mediation. The parties then appointed experts to assess the market value of the House as at the time of the compulsory acquisition for the purposes of the mediation. Unfortunately, the mediation did not result in a resolution. On 6 February 2018, we allowed the parties' applications for leave to adduce their respective expert reports as further evidence, and also granted leave to the Respondents to file further submissions, with Mr Ahmad having liberty to reply. Thereafter, we heard the parties again on 6 August 2018. We now outline their respective positions.

26 Mr Ahmad first contends that either he or Mr Adam acquired title to the House by adverse possession before 1988 because their family resided there continuously from the 1950s. Mr Ahmad initially claimed title to the entire Land but he later confined his claim to the House and submitted that the House and its curtilage and the area used to access it from Palm Drive occupied a land area of 3,598.6m^2. As evidence of factual possession and an intention to possess the Land to the exclusion of the world, Mr Ahmad relies on personal documents such as birth certificates and a school report card dating back to the 1950s and 1960s that record the family's address as being the House. He also relies on documents evidencing the family's control over the House, such as receipts for property tax and maintenance expenses. Although he and his siblings lived at other residences at various times, he claims that one or more family members were always residing in and exercising control over the House between the 1950s and 1988. Further, he argues that the family's belief that the Land was *waqaf* land did not preclude their clear intention to possess the Land to the exclusion of all others.

27 Next, Mr Ahmad contends that the Award was made in breach of natural justice and the requirements of the 1987 LAA because neither he nor Mr Adam

had received notice of the compulsory acquisition or the Award in 1988 despite being occupants who had acquired title by adverse possession.

28 To remedy this alleged breach, Mr Ahmad initially prayed for the Award to be set aside and an order made for a re-hearing of the assessment of compensation by the Collector. However, he now argues that a failure to serve a notice of acquisition in accordance with the provisions of the 1987 LAA should entitle him to reasonable compensation, awarded and assessed by this court, for the value of the House. Compensation should be assessed, he contends, on the basis of the value of the House as a residence as at 30 November 1973, adjusted according to the Property Price Index. On the basis of the valuation he obtained from Bernard Valuers & Real Estate Consultants Pte Ltd, Mr Ahmad submits that the value of the House with a land area of 3,598.6m^2 as at 30 November 1973 was $544,115.88. Adjusted using the Property Price Index, this is said to amount to $7,345,564.38 as at March 2009 and $11,051,382.17 as at 30 June 2017.

29 On the other hand, the Respondents submit that Mr Ahmad and Mr Adam did not acquire title to the Land or the House by adverse possession. They argue that Mr Ahmad's claim to physical possession of the House is contradicted by evidence that he and various family members did not reside in it during the relevant period of time. Moreover, since the family was permitted to reside in the House in exchange for taking care of the Land, their occupation was not adverse in nature. The Respondents also dispute the date when Mr Ahmad's or Mr Adam's interest could have crystallised and the area of land over which they could have acquired an interest. Finally, the Respondents argue that Mr Ahmad and Mr Adam lacked the requisite intention to exclude the world

because they believed that the Land was *waqaf* land to which the family could not lay claim.

30 Next, the Respondents deny that there was any breach of the procedure for compulsory acquisition under the 1987 LAA because the requisite notices were all issued. Even if there was a breach, the Respondents contend that Mr Ahmad is not entitled to any remedy because Mr Ahmad has no basis to claim that the Award was incorrectly assessed.

31 On a more fundamental level, the Respondents submit that even if Mr Ahmad were to succeed in his claims of adverse possession and breach of natural justice, there is no basis on which the Award can be set aside or for a re-hearing of the assessment of compensation. This is because s 53 of the 1987 LAA does not permit an award made under the Act to be set aside. Mr Ahmad's remedy, according to the Respondents, is to appeal to the Appeals Board (Land Acquisition) ("the Appeals Board") rather than seek compensation through court proceedings. And even if he appeared before the correct forum, the compensation due to him would be assessed based on s 33 of the 1987 LAA, *ie*, by the market value of the acquired land as at 30 November 1973, with such market value to be determined based on the existing use or the continued use for the purpose designated in the Master Plan, whichever is the lower, after taking into account the zoning of the land. Assuming a site area of 405.5m^2 for the House, the Respondents' expert, Associate Professor Lum Sau Kim ("Prof Lum"), is of the opinion that the compensation payable in 1988 would have been the lower of $791 (based on the Land's zoning as "cemetery" and use as a burial ground) and $8,322 (based on the House's zoning as "cemetery" and use as a residence). If this sum is not apportioned to Mr Ahmad from the Award of $18,800 that was deposited into court in 1988, the Respondents are prepared

to accept that 6% interest per annum is payable from June 1988, this being the interest rate prescribed by s 41 of the 1987 LAA. This would amount to a total of $18,807 (with interest from June 1988 to March 2009) or $22,801 (with interest from June 1988 to June 2017).

Issues

32 The following issues arise for our determination:

(a) Had Mr Ahmad or Mr Adam acquired title to the House or the Land or any part thereof by adverse possession by 27 November 1987, the date of the gazette notification under s 5 of the 1987 LAA?

(b) If Mr Ahmad or Mr Adam had acquired title to the Land or the House prior to 27 November 1987, did the Collector fail to comply with the notice requirements in the 1987 LAA or otherwise commit a breach of natural justice by failing to give notice of the acquisition and the inquiry to Mr Adam or Mr Ahmad at the House?

(c) If Mr Ahmad succeeds in proving a breach of natural justice or of the notice requirements in the 1987 LAA, what remedy is he entitled to? In particular, is he entitled to: (i) compensation; (ii) have the Award set aside; or (iii) an order for a fresh inquiry by the Collector?

Adverse possession

The law

33 It is not disputed that Mr Ahmad's claim is not affected by the abolition of the acquisition of title by adverse possession in 1994 by the Land Titles Act 1993 (No 27 of 1993) and s 9(3) of the Limitation Act (Cap 163, 1996 Rev Ed).

This is because he claims that his or Mr Adam's title to the Land or the House crystallised before the compulsory acquisition. At that time, s 9(1) of the Limitation Act (Cap 163, 1985 Rev Ed) was still in operation and it provided as follows:

> No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

34 For Mr Ahmad to succeed in proving his title by adverse possession, he must establish two elements: factual possession and an intention to possess. As set out in *Lee Martin and another v Wama bte Buang* [1994] 2 SLR(R) 467 ("*Lee Martin*") at [16], citing *Powell v McFarlane* (1979) 38 P&CR 452 at 470–471:

> (a) Factual possession signifies an appropriate degree of physical control. It must be single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. The alleged possessor must have been dealing with the land in question as the occupying owner might have been expected to do.
>
> (b) The intention to possess involves an intention to exclude the world at large, including the owner, so far as is reasonably practicable and so far as the process of the law will allow.

35 To succeed, the adverse possessor must establish that he was in factual possession of the land for at least 12 continuous years. This 12-year period can be constituted by the aggregate of separate but continuous periods of adverse possession by different people: *Re Lot 114-69 Mukim 22, Singapore and another action* [2001] 1 SLR(R) 811 at [41]. The adverse possessor need not

personally be in occupation of the land to be in factual possession or to have the requisite intention to possess: *Soon Peng Yam and another (trustees of the Chinese Swimming Club) v Maimon bte Ahmad* [1995] 1 SLR(R) 279 ("*Soon Peng Yam*") at [14]. What is crucial is that the adverse possessor dealt with the property as an owner. Receipt of rent or grant of a licence in respect of the property would be an act of ownership adverse to the title of the true owner.

36 In relation to the intention to possess, it has been held that such an intention is not inconsistent with the recognition or belief that somebody else in law has a better title to the land and that somebody else might be better placed to call upon the processes of the law to acquire or regain physical control of the land if he chooses: *Moulmein Development Pte Ltd v Teo Teck Guan and another* [1998] 1 SLR(R) 195 at [21]. The court in that case also observed at [20] that the requisite intention is an intention to possess; an intention to own is not required.

Area of land

37 We begin by determining the area of land to which Mr Ahmad may potentially claim title by adverse possession.

38 Mr Ahmad's case in this regard has evolved in the course of the appeal. Initially, he claimed title over the entire land area of 9,636.6m^2, including the burial ground. This was contrary to his position before the court below, where he had decided to limit his claim only to the portion that was not a burial ground. According to him, the non-burial ground, comprising that the House and its curtilage, was 1,271.8m^2 in size. However, he provided no site plan identifying this portion of the Land.

39 After the appeal was adjourned for mediation, Mr Ahmad decided to confine his claim to the House and instructed an architect, Mr Zahidi A Rahman ("Mr Zahidi"), to offer an expert opinion as to the land area of the House. On the basis of Mr Zahidi's report, Mr Ahmad now claims that the area occupied by the House was 3,598.6m^2. This area is said to cover the entire non-burial portion of the Land from the entrance on Palm Drive up to the slope that purportedly separated the residence from the burial ground.

40 Mr Ahmad's principal reasons for claiming a site area of 3,598.6m^2 are, first, that it is consistent with the layout of a Malay kampong house; and second, that it comprises the part of the Land that was not used as a cemetery. Mr Zahidi opined that the House was a Malay kampong house that was part of Kampong Siglap and layouts of Malay kampong houses take into account the terrain and the vegetation. As such, the compound surrounding the actual structure of the House is a "multi functional area for fruit trees, vegetables and/or for work, play and socialise [*sic*]", with the terrain and vegetation marking out the boundaries of each Malay house in relation to the neighbour's. On this basis, Mr Zahidi used a topographical plan and a satellite image generated by Google Maps to deduce that the boundary of the House was marked by fences to the south, east and west, and to the north by trees along a slope and the slope itself which separated the residential area from the cemetery. Based on this view of the terrain, Mr Zahidi calculated that the size of the plot up to the slope separating the residence from the burial ground was 3,598.65m^2. To confirm that this calculation was roughly consistent with the actual use of the Land, Mr Zahidi calculated that, on the assumption that each Muslim grave is about 2m by 1m, the area unoccupied by graves should have been about 3,470m^2.

41 In contrast, the Respondents submit that Mr Ahmad's claim, if established, must be limited to an area of 261.9m^2, which they submit was the area occupied by the House. This was the area that Mr Ahmad was granted permission to occupy under the three TOLs which each annexed a site plan depicting the affected land area. The site area of 261.9m^2 comprised: (a) the gross floor area (about 143.36m^2) of the building making up the House proper and other structures; and (b) open areas (including concrete drainage and pavements) covering about 118.54m^2. The Respondents submit that this approach to calculating the affected land area is consistent with the analysis in *Buang bin Jabar v Soon Peng Yam and Chan Ah Kow as trustees of the Chinese Swimming Pool* [1994] SGHC 113 and *Maimon bte Ahmad (administratrix of Sukinah binte Haji Hassan, deceased) v Soon Peng Yam and Chan Ah Kow as trustees of the Chinese Swimming Club* [1994] SGHC 117. In those cases, the High Court determined that the respective plaintiffs only acquired a possessory title over the land area occupied by the house and its curtilage because there was no fence around the respective houses and the general public could move freely around them right up to their walls.

42 In the alternative, the Respondents were prepared, for the purposes of the mediation, to negotiate on the basis of a larger site area of 405.5m^2. This larger area includes the open land area leading from Palm Drive to the enclosed structure of the House, and appears to have been calculated in the light of our provisional view that the actual usage of the House might have included a portion of land for occupants to have access to the front door of the House. While the Respondents have not indicated that they would accept in this litigation that the area of the House extended to 405.5m^2, they appear to be content with this position, having instructed Prof Lum on this basis and adduced

Prof Lum's expert report as evidence before us. The calculations of land value produced in Prof Lum's report were made on the basis of this larger area.

43 In our judgment, it is untenable for Mr Ahmad to maintain a claim to the entire Land. The cemetery was freely accessible by members of the public and was not surrounded by a fence or any other form of enclosure. There was no evidence that Haji Anwar, Mr Adam or Mr Ahmad controlled access to the cemetery in any way or that they did so as an assertion of their exclusive possession of the same. In our view, their relationship to the burial grounds was similar to that of the caretaker of the temple in *Re Lot 114-69 Mukim XXII, Singapore* [2003] 1 SLR(R) 773, a case cited by the Respondents. In that case, the High Court found that the caretaker never had exclusive possession of the temple grounds. This was because, among other reasons, the temple was open to the public without any restriction as to access and the caretaker's efforts at regulating entry to the temple premises was consistent with his caretaker duties and not an act of assertion of ownership: see [74] and [79].

44 Thus, the affected area of the Land, in our judgment, has to be limited to the area occupied by Mr Ahmad's family as their residence. The next question is, therefore, what area was occupied by the House. In this regard, we find that Mr Ahmad's proposed land area of 3,598m^2 cannot be supported. First, it is a significant departure from his earlier assertions that the House and its curtilage had an area of 1,271.8m^2. Until 2018, Mr Ahmad never asserted that the House included a large garden or a multi-functional area demarcated by the vegetation and the slope. If this was the true extent of the family's use of the Land as a residence, Mr Ahmad would have been in a position to depose to these facts even before Mr Zahidi was instructed in 2018. In the same vein, we take the view that it is not a matter for expert opinion whether the family had used the

grounds up to the slope as an extension of their residence from the 1950s onward. These would have been facts within Mr Ahmad's personal knowledge and which he was competent to depose to in his affidavits. Yet his affidavits merely state that his grandfather built a house and contain no description of the family's exclusive use of the compound surrounding the building as part of their residence. In any event, we are unable to accept Mr Zahidi's calculation of the site area because it is based on the state of the Land in 2017. Mr Zahidi relied on a topographical map, superimposed onto a satellite image generated by Google Maps, to discern the position of the slope which he regarded as the natural boundary marker of the House. Even if Mr Zahidi's opinion about the layout of a Malay kampong house were to be accepted, there is no evidence that the terrain and natural boundary markers he relied on existed in the 1950s and 1960s.

45 In our judgment, therefore, the portion of the Land over which Mr Ahmad may potentially claim title has an area of 405.5m^2. This comprises (a) the site area of 261.9m^2 set out in the TOLs issued by the SLA to Mr Ahmad in 2014 and 2015; and (b) the additional area required to access the House from Palm Drive. As a starting point, we regard the TOLs as the most reliable evidence of the area occupied by the House. Indeed, it is somewhat of a concession to consider a claim for the area described in the TOLs given that Mr Ahmad gave evidence that the house was expanded by Mr Adam at some point in its history. Next, we think it is reasonable to factor in an additional area of land which the occupants would have used to access the House from Palm Drive. We therefore accept the larger site area of 405.5m^2 which the SLA proposed for this purpose, as depicted in the site plan at Annex 3 of Prof Lum's Report.

Factual possession

46 We now address whether Mr Ahmad has established, on a balance of probabilities, that he or Mr Adam had factual possession of the House for a continuous period of 12 years.

Whether there was factual possession for 12 continuous years

47 In our judgment, there is ample evidence that Mr Adam and his family occupied the House from as early as 1955 and that they continued to occupy the House until at least 1997, when Mr Adam passed away. This is supported by the following documents and evidence:

(a) The school report book of Mr Adam's son, Aman bin Adam, for the year 1955 which states that his home address was 472-X Palm Drive.

(b) The birth certificate of Mr Adam's son, Agus bin Adam, which records that he was born at 472-X Palm Drive on 30 September 1957.

(c) The birth certificates of Mr Adam's son and daughter, Agil bin Adam and Nafiah binte Adam, which state, respectively, that Mr Adam's home address was 472-X Palm Drive on 3 November 1961 and 18 February 1964.

(d) According to her marriage certificate, Mr Adam's daughter, Sopina binte Adam, was married at 472-X Palm Drive on 6 December 1964. The same certificate records her residence as 472-X Palm Drive.

(e) Mr Adam was imprisoned from 19 May 1964 to 11 November 1970. After his release, on 8 December 1970, his residential address on his identity card was reported to be 472-X Palm Drive. According to

records kept by the Immigration & Checkpoints Authority ("the ICA"), Mr Adam's residential address was the address of the House from 1970 until his death in 1997.

(f) Bills and receipts for the payment of property tax in respect of 472-X Palm Drive for the years 1964, 1966, 1967, 1971, 1972, 1973 and 1974 were adduced as evidence and they were addressed to Mr Adam at 472-X Palm Drive.

(g) In 1973, the Ministry of the Environment wrote to Mr Adam at 472-X Palm Drive regarding the installation of sewerage and sanitation facilities at 472-X Palm Drive. Mr Adam consented to this installation. Bills addressed to Mr Adam for the cost of this installation, and a receipt for part of Mr Adam's payment for this installation, have also been tendered as evidence.

(h) According to the ICA's records, during the period from 1963 to 1982, the residential address on Mr Ahmad's identity card was first 472-X Palm Drive and later 8A Palm Drive.

(i) The death certificate of Mr Adam's wife, Menah binte Simin, who passed away in 1982, which states that her address was 8A Palm Drive. The informant of her death was Mr Adam's son, Agus bin Adam, and his address was also recorded as 8A Palm Drive.

(j) The divorce certificate for Mr Adam's divorce from his third wife in 1993 which records that his residence was at 14 Palm Drive. Mr Adam's death certificate in 1997 records his address and place of death as 14 Palm Drive.

(k) Mr Adam and his estate continued to be billed for property tax even after the State's acquisition, between 1988 and 2013. There is in evidence a property tax bill dated 26 December 1997 addressed to Mr Adam as the "[o]wner" of 14 Palm Drive, and another property tax bill in respect of 14 Palm Drive dated 8 November 2010 addressed to Mr Adam. The Inland Revenue Authority of Singapore only ceased to collect property tax (and later refunded all property tax collected after 1988) when it was informed by the SLA in 2013 that the House was State land.

48 We are satisfied that the above evidence demonstrates the open and exclusive physical possession of the House by Mr Adam and his family from as early as 1955. Building a house on part of the Land and living in it as a family is very strong evidence of adverse possession. Mr Adam also exercised acts of ownership over the House such as the payment of property tax and his compliance with a notice from the Ministry of the Environment requiring the installation of a sewerage system at personal cost. This case is not unlike *Soon Peng Yam* ([35] above) where the respondent was found to have dealt with the land as an owner when she permitted a family to stay there as her tenants, paid utilities bills and repair costs, and complied with a notice from the Ministry of the Environment requiring the installation of rural sewerage system at personal cost: see *Soon Peng Yam* at [17]. These were regarded as acts that evidenced a degree of control that equated to factual possession because the true owners could not make any meaningful use of the land at all. We are of the view that Mr Adam dealt with the area of the Land occupied by the House in a similar manner.

49 Against this, the Respondents argue that Mr Ahmad's attempt to establish a continuous 12-year period of adverse possession between 1950 and 1988 is undermined by evidence contradicting his or Mr Adam's occupation of the House during this period. The Judicial Commissioner agreed with the Respondents that Mr Ahmad's claim should fail because of the "fragmentary and inconsistent nature" of his evidence: GD at [17]. To properly appreciate the Respondents' argument, it is necessary for us to first detail all the evidence and arguments presented by the Respondents to refute Mr Ahmad's claim. They argue as follows:

(a) First, Mr Ahmad has not given a consistent account of when adverse possession commenced. In his earlier affidavits, Mr Ahmad stated that Haji Anwar occupied the Land "[s]ince 1950", from "as early as 1950" and from the "early 1950s". However, he later stated that Mr Adam was in adverse possession from "as early as 1961 … if not by February 1964". In his Appellant's Case, he altered his position yet again and submitted that Haji Anwar began occupying the Land in "1957".

(b) Next, adverse possession could not have commenced in 1950. Mr Ahmad's birth certificate states that on 9 October 1950, his place of birth and his parents' address was 497 Woo Mon Chew Road. The birth certificate of Mr Ahmad's sister, Latifah bte Adam, states that her place of birth and her parents' address was 64 Figaro Street on 3 January 1953.

(c) Adverse possession could not have commenced in 1955 or 1957 either. The Respondents contend that the authenticity of the 1955 school report book (see [47(a)] above) should be doubted because it contradicts Mr Ahmad's claim, in his Appellant's Case, that Haji Anwar was

allowed to build the House only in 1957. Moreover, although the birth certificate of Agus bin Adam in 1957 (see [47(b)] above) states the place of birth as 472-X Palm Drive, it reflects Mr Adam's home address as "64 Figaro Street", suggesting that Mr Adam did not reside at the House in 1957.

(d) Even if adverse possession commenced in 1955 or 1957, Mr Adam's title could not have crystallised in 1967 or 1969 because he was incarcerated between 19 May 1964 and 11 November 1970. During this time, he was not in physical control of the House and there is no evidence that he authorised anybody else to possess the House on his behalf. Further, title could not have vested in Mr Ahmad in 1967 or 1969 because he had no legal capacity until he turned 21 years old in October 1971.

(e) Adverse possession, if established, could have commenced only in November 1961 at the earliest. This is based on Agil bin Adam's birth certificate dated 3 November 1961, which is the earliest document reflecting Mr Adam's home address as 472-X Palm Drive ([47(c)] above). This would mean that Mr Adam's interest crystallised in November 1973. By 11 September 1973, however, s 3(1)(*c*) of the Residential Property Act (Act No 18 of 1976) would have come into effect. Under that provision, Mr Adam would no longer have been able to acquire an interest or estate in the House since he was stateless.

(f) Mr Ahmad does not have an independent claim to adverse possession because prior to gaining legal capacity, he occupied the House not in his own right but as a member of Mr Adam's family. And after gaining legal capacity, he did not occupy the House for at least

12 years in his own right because there was evidence that he lived at other residences between March 1977 and September 2009:

(i) When Mr Ahmad's daughter, Hyezrina bte Ahmad Kasim, was born on 10 March 1977, Mr Ahmad and his first wife were living at No 34F Jalan Murai, off Lim Chu Kang Road (as recorded in her birth certificate). When the same daughter passed away in 1982, Mr Ahmad and his first wife were living at Block 170 Ang Mo Kio Avenue 4 (as recorded in her death certificate).

(ii) The ICA's records show that Mr Ahmad and his first wife moved to two different units at Block 170 Ang Mo Kio Avenue 4 in 1982 and 1986 respectively. They were still living in this second unit when his first wife passed away in 1997 (as recorded in her death certificate). It was only on 9 September 2009 that Mr Ahmad amended the address on his identity card to 14 Palm Drive.

(g) According to the ICA's records, the registered residential address of Mr Adam's third wife, to whom he was married between 23 May 1987 and 1 December 1993, was Block 76 Bedok North Road. The Respondents thus infer that Mr Adam lived at Bedok North Road with her during their marriage and was no longer occupying the House when the compulsory acquisition took place in 1988.

(h) Lastly, of the nine family members who were alive in 1988, eight had obtained their own HDB flats before 1988 and were therefore no longer living on the Land in 1988.

50 We are not persuaded that the evidence and arguments rehearsed above undermine Mr Ahmad's claim. We do agree with the Respondents that Mr Ahmad has not been able to prove when exactly the family began to reside at the House. We also agree that the evidence contradicts his assertions that the family took up residence there *from 1950*. However, in our judgment, the objective documentary records show that *by 1955* Mr Adam's family had commenced its residence in the House and that they continued to reside there for at least the next 12 years:

(a) The earliest documentary record of their presence at the House is the 1955 school report book (see [47(a)] above). In our view, there is little reason to doubt the authenticity of the 1955 school report book or to think that the family would have fabricated the address reported to the school.

(b) The next document in the chronology is Agus bin Adam's birth certificate in 1957 (see [47(b)] above). Although it records Mr Adam's home address as "64 Figaro Street" in 1957, the fact that the child was born at 472-X Palm Drive supports a finding that the family had taken up some form of residence in the House.

(c) Subsequent birth certificates, marriage certificates and bills (see [47(c)]–[47(j)] above) show that Mr Adam's family continuously resided in the House for at least 12 years after 1955.

51 The requirement for a continuous 12-year period of occupation is thus satisfied. The period of adverse possession that counts towards the limitation of the true owner's right of action was 1955 to 1967. Although Mr Adam was in prison for part of this 12-year period (*ie*, 1964 to 1967), we are satisfied that he

continued in occupation through his family members, who carried on residing at the House as his licensees and on his behalf. This is evident from the fact that he returned to the House after his release from prison, and the fact that property tax bills continued to be addressed to him there between 1964 and 1970 (see [47(e)]–[47(f)] above). With respect, we disagree with the Judicial Commissioner that this evidence is unpersuasive because it appears to be "fragmentary"; given that the events which Mr Ahmad seeks to prove occurred more than fifty years ago, we think that the evidence adduced is in keeping with the kind of records that one would expect a family to retain in relation to affairs of its members that occurred decades earlier.

52 For completeness, we will also address the Respondents' claim that neither Mr Adam nor Mr Ahmad occupied the House up to 1988 and therefore neither of them had the best possessory title to the House at the time of the compulsory acquisition. We agree with the Respondents that the evidence shows that *Mr Ahmad* had moved out of the House by 1977 and that it suggests that he lived elsewhere until around 2009 (see [49(f)] above). However, the evidence also shows that *Mr Adam* continued to reside at the House until his death in 1997 (see [47(h)]–[47(k)] above). The only evidence that suggests otherwise is the fact that the residential address on his third wife's identity card was at Bedok North Road for the duration of their marriage from 1987 to 1991. However, this evidence is equivocal given that the residential address on Mr Adam's identity card continued to be the address of the House for the duration of their marriage as well. In fact, Mr Adam updated the residential address on his identity card *thrice*, in 1974, 1983 and 1992, to reflect the new unit number of the House as it changed from "472-X" to "8A" to "10A" and finally "14" Palm Drive over the years. We therefore think it is more likely than

not that Mr Adam occupied the House from the time that he was released from prison in 1970 until he passed away in 1997.

Whether possession was adverse

53 Besides disputing continuous possession, the Respondents also argue that the occupation of the House by Mr Ahmad's family was permissive in nature and not adverse to the interests of the true owner. It is established law that possession of land is not adverse to the true owner if it can be referred as due to a lawful title, namely, to the continuing licence and permission of the true owner: *Lee Martin* at [10]. Where possession is permissive at its inception, it is not possible to put an end to that permissive possession by a secret intention in the mind of the person in possession; there must be an ouster of the true owner of the land by the occupier visibly dealing with the land in a manner that is hostile to the true owner: see *Lee Martin* at [13].

54 Mr Ahmad's evidence, in essence, was that his grandfather, Haji Anwar, was given permission to "build a simple house" on the Land as his "new permanent abode" as a *quid pro quo* for his services in maintaining the cemetery. In the MP Letter, Mr Ahmad described the beginnings of the family's occupation vaguely, stating that he only had second-hand knowledge of these matters and suggesting that Mr Adam may have had contact with the first respondent:

> [The Land] was then owned by Moona Esmail Tamby Marican s/o Mohamed Ganse. I have no personal knowledge of what actually transpired between my father and the landowner as I was in my childhood days. Whatever knowledge I had was passed to me by father Mr Adam Bin Haji Anwar who passed away on 29 May 1997.
>
> My father told me that the land we are living on is waqaf land, to be used as a burial ground for Muslims. *We are allowed to*

> *build a house on that land as we will not be paid for the upkeep of the cemetery and its vicinity.* We also pay for property tax and our record of receipts date back to 1964 and we are still paying for it now. …
>
> …
>
> … 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. … I have never even met the persons who are registered as owners of the land or their descendants. …
>
> [emphasis added]

55 In Mr Ahmad's first affidavit, he stated that the headman of Kampong Siglap had allowed Haji Anwar to build a house on the Land:

> 10.1 … Voluntarily my grandfather took upon himself to clear the dense vegetation so that the unhealthy activities occurring there would be rid of and the land be safely accessible again and usable for burials. Due to his effort on the land, the then Penghulu or Village Head of what was called Kampong Siglap, one Cikgu Osman asked my grandfather to keep maintaining the land and appointed him as the caretaker for the maintenance and upkeep of the graveyards. *My grandfather was allowed to build a house on the said plot of land as his new permanent abode.* This was sometime in the early 1950s.
>
> …
>
> 10.4 Since the cemetery or burial area only occupied part of the whole plot of land, my grandfather built the said house for him and his family and moved there which we have been [*sic*] our permanent and registered residence. …
>
> 10.5 We did not know who actually owned the whole plot of land and nobody since then ever came to approach us to claim any kind of ownership or proprietary interest in the land. Neither the said Village Head informed us whose land it was or who had dedicated or how part of the land was used for burial ground.
>
> …
>
> 13 … When my grandfather managed to clear the land we were entrusted to take care of the land without any reward and

> given *the permission to build a simple house for our permanent abode*. … At all material time and even during my late father's time none of us had ever met the persons who were supposedly the original owner or mortgagee of the land or their next-of-kin or personal representatives. …
>
> [emphasis added]

56 In answer to interrogatories, Mr Ahmad repeated that the village headman, Cikgu Osman bin Hassan, had given permission to Haji Anwar.

57 On the basis of the above evidence, the Respondents argue that Mr Adam's family's possession was permissive in nature. There are two parts to this argument. First, the Respondents argue that there was no ouster of the true owner since, as Mr Ahmad deposed, Haji Anwar was "allowed" or "given permission" to build the House in exchange for taking care of the cemetery, and the family's dealings with the Land and the House were "entirely consistent with their role as caretakers". We do not accept this argument. Possession is not adverse only where the *true owner* of the land has granted the occupier permission to occupy the land. In the present case, the true owners of the Land were the paper owners and their heirs. Taken in the round, Mr Ahmad's account is that a party who had no interest in the Land, namely Cikgu Osman bin Hassan, allowed Haji Anwar to build a permanent home on the Land. Mr Ahmad stated in his affidavit that nobody in his family had ever met the paper owners (see [55] above). Since permission was not granted by the paper owners, we are of the view that, *prima facie*, the family's possession was indeed adverse to the true owners.

58 The second part of the argument follows from our response to the first. The Respondents argue that where one party is granted a licence to occupy land by another party who in fact has no title to the land, the former is treated as

being in possession on behalf of the latter. It is argued that since the family occupied the House with the permission of the village headman, they possessed the House on behalf of the headman and the possessory title that accrued by way of adverse possession vested in the headman. Thus, it is said that Mr Adam's estate is not entitled to a declaration of title. For this submission, the Respondents rely principally on the Privy Council decision in *Sze To Chun Keung v Kung Kwok Wai David and Another* [1997] 1 WLR 1232 ("*Sze v Kung*").

59 We do not think *Sze v Kung* has the effect for which the Respondents contend. There, the plaintiffs were the registered owners of land. In 1955, the defendant began occupying the land. In 1961, operating under a mistaken belief as to the ownership of the land, the Crown granted the defendant a land permit entitling him to occupy it "for a temporary period" and to erect buildings upon the payment of a fee. In 1988, the Crown discovered that the land was privately owned and cancelled the permit, but the defendant continued to occupy the land for another two years. Throughout this time, the plaintiffs were unaware of the Crown's permit. In 1990, the plaintiffs sued to recover possession from the defendant. It was accepted that when the defendant occupied the land in 1955, the plaintiffs were dispossessed of the land. The Privy Council reasoned that in 1961, "the effect of the permit was that [the defendant] possessed [the land] on behalf of the Crown", who took the benefit of the defendant's possession for the duration of the permit. This was because, "[b]y accepting the benefit of the permit, [the defendant] became estopped from denying that the Crown had the right to allow him to occupy" (at 1235E–F). Nonetheless, the defendant's possession, whether on his own behalf or on behalf of the Crown, was *adverse to the plaintiffs*. Since the Limitation Ordinance was "not concerned with whether the defendant has acquired a title but with whether the plaintiffs' right

of action has been barred" (at 1236B–D), the plaintiffs failed to recover possession as their title was found to have been extinguished around 1975, when the 20-year limitation period expired. That was a time when the defendant would still have been possessing the land *on behalf of the Crown.* The fact that the defendant could not have denied the Crown's title between 1961 and 1975, however, did not stop the limitation period from running adversely to the plaintiffs. That the defendant was not in possession on his own behalf when adverse possession crystallised was irrelevant because all that mattered was whether the plaintiffs' right of action had been barred. The Privy Council stated the position thus (at 1236B-D):

> It therefore appears to their Lordships that, on the facts as pleaded, the land has been continuously in adverse possession since 1955 and that the plaintiffs' title was extinguished in about 1975. *To all outward appearances, there was no change in possession throughout the period and the licensing arrangements between the defendant and a third party, the Crown, did not affect the adverse nature of the possession as against the plaintiffs.* At the time when proceedings were commenced, the defendant had been in possession on his own account for only two years. But this does not matter: *the Limitation Ordinance is not concerned with whether the defendant has acquired a title but with whether the plaintiffs' right of action has been barred. For this purpose, all that matters it that there should have been continuous adverse possession for the period of limitation.* The rights inter se of the successive persons who may have been in possession adversely to the plaintiffs since they were dispossessed are for this purpose irrelevant. [emphasis added]

60 The Respondents also cite *Brazil v Brazil and others* [2005] EWHC 584 (Ch) ("*Brazil*") where *Sze v Kung* was relied upon as authority that possession is not adverse where it is pursuant to a licence or permission, even where the licence or permission was given by someone other than the true owner, since the possession would then be that of the licensor (at [27]). With respect, *Brazil* went too far in implying that in such circumstances possession could never be

adverse against the true owners, a proposition which was not supported by the *ratio* of *Sze v Kung*.

61 We do not accept the Respondents' submission that Mr Adam's occupation could not result in barring the paper owners' right of recovery because such occupation arose from an arrangement with the headman. The Respondents' argument must proceed on the basis that the headman was himself in adverse possession so that they can assert that therefore the possession by Mr Adam's family would enure to his benefit. In such case (which seems to us likely in view of the complete lack of evidence of any lease or licence granted to the headman or his predecessors), whether or not Mr Adam's family occupied the House pursuant to a licence from the headman, it is clear that their possession was adverse to the paper owners. For the purposes of limitation, the paper owners' right of action to recover the House would have been barred at the latest in 1967, after 12 years of continuous adverse possession. Had this been an action by the paper owners to recover the House, it would have failed. As the Privy Council observed in *Sze v Kung*, the rights *inter se* of the successive persons who may have been in possession adversely to the paper owners since they were dispossessed would have been irrelevant.

62 Since, however, Mr Ahmad seeks a declaration that title vested in Mr Adam, it is necessary to determine whether Mr Adam is entitled to possessory title in his own right. The principle in *Sze v Kung* is that a licensee possesses the land on behalf of the licensor because, by accepting the benefit of the licence or permit, the licensee is estopped from denying that the licensor has the right to allow him to occupy the land (at 1235E) and, by implication, that the licensor has a superior title to his.

63 In our judgment, this principle does not apply to defeat Mr Ahmad's claim in the present case. First, the village headman is not asserting, and has never asserted, any right to the House against Mr Adam. The headman who dealt with Haji Anwar must have died long since and neither the current headman nor any heir has been identified. Kampong Siglap itself has disappeared. As against the rest of the world, and certainly as against the State at the time of the compulsory acquisition, Mr Adam had the best possessory title to the House.

64 Second, we are hesitant to conclude that an estoppel arises from Haji Anwar's acceptance of the headman's invitation to reside on the Land. It is not clear from the scant evidence before us that the grant of permission necessarily entailed an admission by Haji Anwar that the headman had superior title to the Land. Mr Ahmad stated that his family did not know who owned the Land. The family believed, erroneously, that the Land was *waqaf* land, which to a Muslim means that it belongs to *Allah* (God) and not to any particular person or entity. It must follow that the family did not think that the headman held title to the House. It seems more likely that the family understood the headman to be administering the *waqaf* land on behalf of the village, exercising communal or religious authority rather than private land ownership rights.

65 We are also hesitant to conclude that the "permission" granted to Mr Haji Anwar was in the nature of a licence. A licence usually means a purely personal right to occupy or use premises without becoming entitled to exclusive possession of them, although it is possible for a grant of exclusive possession to be construed as a mere licence: see *Halsbury's Laws of Singapore* vol 14(2) (LexisNexis, 2014 Reissue) at paras 170.092 and 170.094. In the present case, nothing in the grant of "permission" indicated that Mr Adam's family had

anything less than exclusive possession or that the village headman reserved any right of control over the House. There is no evidence that the headman placed any restriction on how large an area they could build upon, which part of the Land they could build upon, or the nature of the activities they could carry out on the Land. Unlike in *Sze v Kung*, where the Crown permit expressly granted the defendant the right to occupy "for a temporary period" subject to periodic renewal, Haji Anwar was allowed from the outset to build a "permanent abode" on the Land. Even when Mr Adam overtly held himself out to be the owner of the House to the exclusion of the whole world (such as when he paid property taxes or allowed the authorities to construct facilities on the House), there was no evidence that the headman attempted to assert a superior title or residual interest in the House.

66 Accordingly, we are satisfied that Mr Adam had factual possession of the House in his own right from 1955 to 1997, and that various family members lived with him at the House for different lengths of time during those years.

Intention to possess

67 Turning to the intention to possess, the Respondents submit that Mr Adam and his family never had the intention to exclude the world at large from the Land. As evidence of this, they point to the MP Letter in which Mr Ahmad stated that the family "believe[d] [the Land] is bequeathed for public use" and was "*waqaf* land". To a Muslim, *waqaf* is the dedication of property for pious, religious or charitable purposes. As noted above, Muslims regard *waqaf* property as belonging to *Allah* (God) and not to any particular person or entity. It cannot be sold, given away or inherited forever. In fact, the family's belief was erroneous because there is no evidence that the true owners of the Land had ever dedicated it as *waqaf* land. Nonetheless, the Respondents say that

it is the state of mind of Mr Adam and his family that matters. They argue that it "would be inconceivable for a Muslim to claim *waq[a]f* land as his *own*, or to intend to *exclude the world at large* from *waq[a]f* land *in one's own name and on one's behalf*" [emphasis in original].

68 In our judgment, Mr Adam and family demonstrated an intention to exclude all others from the House as far as was reasonably practicable. What is required for adverse possession is not an intention to own or to acquire ownership of the land, but an intention to possess it (see [36] above). Their belief that the Land as a whole was *waqaf* land did not preclude an intention to exclusively possess the portion of the Land given to them as a benefit in kind for their caretaking services. This intention was manifested in their construction of the House, their residing in the House without paying any rent, their construction of sanitary facilities, and their payment of property tax and utility bills.

Relief

69 For the above reasons, we are satisfied that from 1955 to 1967, Mr Adam was in factual possession of the House, and that this was accompanied by the intention to exclude all others from it so far as was reasonably practicable. We therefore grant the following declarations:

(a) that Mr Adam adversely acquired title to the House (occupying an area of 405.5m^2) in 1967 by virtue of his adverse possession and that after his demise, such title passed to Mr Ahmad in his capacity as the personal representative of Mr Adam's estate; and

(b) that all rights and title to the House held by the paper owners (*ie*, the first and second respondents) or any persons claiming through them were extinguished in 1967.

Breach of natural justice and notice requirements under the 1987 LAA

70 We turn now to Mr Ahmad's contention that the Award was made in breach of natural justice and the requirements of the 1987 LAA because neither he nor Mr Adam had received notice of the compulsory acquisition in 1988.

71 Sections 8 and 11 of the 1987 LAA provide for the service of notice of the compulsory acquisition and the Collector's award, while s 45 specifies the mode of service. They read as follows:

> **Notice to persons interested**
>
> **8.**—(1) The Collector shall then cause notices to be posted at convenient places on or near the land to be taken stating —
>
> (*a*) that the Government intends to acquire the land; and
>
> (*b*) that claims to compensation for all interests in the land may be made to him.
>
> (2) The Collector shall also serve notice to the same effect on all persons known or believed to be interested in the land, or to be entitled to act for persons so interested, and residing or having agents authorised to receive service on their behalf within Singapore:
>
> Provided that, if any such person resides elsewhere and has no such agent, the notice may be sent to him by registered post if his address can be ascertained after reasonable inquiry.
>
> (3) Every such notice under subsections (1) and (2) —
>
> (*a*) shall state the particulars of the land; and
>
> (*b*) shall require all persons interested in the land —
>
> (i) to appear personally or by any person authorised in writing in that behalf before the

> Collector at the time and place mentioned in the notice …; and
>
> (ii) to state the nature of their respective interests in the land, the amount and particulars of their claims to compensation for those interests, the basis or mode of valuation by which the amount claimed is arrived at, and their objections, if any, to the measurements made under section 7.

…

Award of Collector when to be final

11.—(1) 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.

(2) The Collector shall serve a copy of his award on all persons interested provided that their addresses can be ascertained after reasonable inquiry when the award is made.

…

Service of notice

45.—(1) …

(2) Whenever practicable, the service of the notice shall be made on the person therein named or on any agent authorised to receive service on that person's behalf.

(3) When that person cannot be found and no agent is authorised to receive on that person's behalf, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the Collector and also on some conspicuous part of the land to be acquired:

Provided that, if the Collector, the Board or the court so directs, a notice may be sent by registered letter addressed to the person named therein at his last known residence, address or place of business, and service of it may be proved by the production of the registration receipt.

72 Section 8(1) provides for general notice to be posted on or near the land while s 8(2) provides for specific notice to be given to persons known or believed to be interested in the land. Section 2 defines "person interested" as including "every person claiming an interest in compensation to be made on account of the acquisition of land under [the 1987 LAA]".

73 The Notice was posted on the Land on 22 January 1988, but it is unknown where exactly on the Land it was posted (see [8] above). A notice in similar terms was addressed to the paper owners and posted on the Land Office's notice board because they could not be located. There is no record of any such notice being addressed or mailed to Mr Adam.

74 Mr Ahmad's complaint is that no notice of the acquisition was ever sent to the House or posted on the House even though it was a "conspicuous part of the [Land]" within the meaning of s 45(3). This omission is inexplicable, he suggests, because the government must have been aware that Mr Adam was residing in the House since various government departments had been corresponding with Mr Adam regarding the House (see [47(f)], [47(g)] and [47(k)] above). Had Mr Adam and his family received notice, Mr Ahmad says that they would have appeared at the Collector's inquiry to make submissions on their entitlement to compensation. Due to the lack of notice, however, they were deprived of their right to a hearing. Since the Award was made in breach of natural justice, he contends that it ought to be set aside. Mr Ahmad does not challenge the acquisition or the State's title.

75 Although title to the House vested in Mr Adam by virtue of adverse possession in 1967, Mr Adam took no steps to perfect his title. This seems to be the most likely explanation why the Collector did not know or believe that he

was a person interested in part of the Land and why no notice of the acquisition was addressed to Mr Adam personally. The fact that the government continued to bill Mr Adam and his estate for property tax after 1988 suggests that the government simply did not realise that the House was encompassed within the Land that had been acquired by the State. This is strange given that the Collector had a duty under s 7 of the 1987 LAA to mark out and measure the land to be acquired, and one would expect that if a physical inspection of the Land had been undertaken for this purpose, the relevant officers would have observed that the House was on the Land. Nonetheless, there is no suggestion that the Collector had acted in bad faith, and Mr Ahmad does not so contend.

76 The question whether there was a breach of natural justice turns, in our judgment, upon whether notice may be deemed to have been served on Mr Adam by virtue of the posting of the Notice on the Land and whether the 1987 LAA required notice to be affixed to the House. However, it is not necessary for us to resolve this issue because it is our judgment that even if Mr Ahmad were to succeed in proving a breach of natural justice, he has no remedy before this court.

No legal basis to award compensation outside the 1987 LAA framework

77 First, there is no legal basis for us to make a fresh award of monetary compensation to Mr Adam's estate. To begin with, monetary compensation is not one of the reliefs prayed for in OS 397. More fundamentally, the 1987 LAA does not give the court jurisdiction to issue a compensation award at first instance. It is the Collector who makes an award after holding an inquiry, and this award is then appealable to the Appeals Board and thereafter to the Court of Appeal on a question of law (see ss 10, 23 and 29 of the 1987 LAA).

78 Further, we do not accept Mr Ahmad's argument that compensation is a suitable form of relief for a lack of notice or a breach of natural justice in the making of the Award. Mr Ahmad's submission is based on the minority judgment by Gopal Sri Ram JCA in the Malaysian case of *Ng Kim Moi (P) & Ors v Pentadbir Tanah Daerah, Seremban, Negeri Sembilan Darul Khusus (Negeri Sembilan Township Sdn Bhd & Anor, proposed intervenors)* [2004] 3 MLJ 301 ("*Ng Kim Moi*"). In that case, it was undisputed that various notifications prescribed by the Malaysian Land Acquisition Act 1960 ("the Malaysian LAA"), including a public notice of the acquisition and the date of the inquiry for compensation claims, had not been issued or served. When the landowners were finally notified of the acquisition, the Land Administrator's inquiry into compensation was already underway. Ten months later, the Land Administrator made an award in the landowners' favour. The landowners complained that the acquisition violated the Malaysian LAA.

79 By a majority, the Malaysian Court of Appeal dismissed the complaint because the failure to serve did not cause prejudice or injustice to the landowners, who eventually attended the inquiry (at [104] and [111]). The minority, however, held that the landowners were deprived of their land in violation of the Malaysian LAA, which in turn violated their constitutional right to property under Art 13(1) of the Federal Constitution of Malaysia ("the Malaysian Constitution"). In terms of relief, a quashing order was unavailable because the landowners did not file for *certiorari* and, even if they had done so, the State had already transferred the land to third parties. Nonetheless, the minority held that the breach of the fundamental right to property was to be redressed by an award of reasonable compensation reflecting the loss suffered due to the breach of Art 13(1). The minority judgment was subsequently approved by the Court of Appeal in *Ee Chong Pang & Ors v The Land*

Administrator of the District of Alor Gajah & Anor [2013] 2 MLJ 16, where an acquisition was quashed for a breach of Art 13(1) of the Malaysian Constitution because the State Authority failed to publish a declaration that the land was needed for a public purpose in the government gazette.

80 In our view, Mr Ahmad's reliance on *Ng Kim Moi* is misplaced. The compensation award contemplated by the minority in *Ng Kim Moi* was, in the court's words, for a "distinct wrong in public law" (at [71]), namely the violation of the fundamental right to property under Art 13(1) of the Malaysian Constitution. There is no relevant constitutional breach in the present case because our Constitution does not enshrine a right to property. Mr Ahmad has not shown how a breach of natural justice or a breach of statutory procedure can independently give rise to a compensatory remedy. Therefore, we reject Mr Ahmad's claim for a compensatory remedy.

No legal basis to set aside the Award

81 Second, the Award cannot be set aside by declaratory relief and an order for a fresh hearing by the Collector. Section 53 of the 1987 LAA provides that "[n]o suit shall be brought to set aside an award or apportionment under this Act". That section imposes an absolute bar on the issue of any court order declaring that the Award was invalid and should be set aside as null and void as prayed for in OS 379.

82 The compensation which the Appellant says Mr Adam was entitled to would have been paid, if at all, as an award made by the Collector under s 10 of the Act. In doing so, the Collector would have been exercising quasi-judicial functions by virtue of the statutory powers vested in him. The appropriate procedure for challenging the exercise of such powers is by way of the process

of judicial review. Judicial review is not a proceeding which is banned by s 53 of the 1987 LAA (see *Seah Hong Say (trading as Seah Heng Construction Co) v Housing and Development Board* [1992] 3 SLR(R) 497 at [6]–[7]). The appropriate remedy for the alleged breaches, if established, would be to quash the Award and mandate that the Collector conduct a fresh inquiry.

83 This position is also reiterated by N Khublall, *Compulsory Land Acquisition Singapore and Malaysia* (Butterworths Asia, 2nd Ed, 1994) ("Khublall") at p 35:

> Section 53 of the Land Acquisition Act provides that no suit can be brought to set aside an award or apportionment under the Act. In an appropriate case, an aggrieved person may invoke the process of judicial review to ask, for example, that a decision improperly arrived at be quashed by certiorari or that the process be followed by mandamus.

84 It is also relevant to consider cases where the government acquired land without knowledge of, or notice to, the persons who were in fact interested in the land, which is what Mr Ahmad contends happened in this case. There have been at least two such cases in Malaysia which we may regard as persuasive given that our land acquisition regimes are similarly structured. The first case, *Ng Chee Keong & Ors v Lembaga Letrik Negara & Anor* [1991] 1 CLJ 567, suggests that the appropriate remedy is for the persons interested in the land to seek a quashing order through judicial review proceedings. The government of Malaysia had engaged the defendants to build an access road on a portion of land that the government had acquired. In 1989, the plaintiffs, as personal representatives of the previous owner of the land, sued the defendants for trespass and alleged that the acquisition was null and void because the government had failed to give notice of the acquisition and inquiry as required under the Malaysian LAA. The defendants adduced documents to show that in

1972, the acquisition had been duly gazetted and that compensation had been paid to the assistant registrar of the High Court.

85 The High Court held that the plaintiffs were precluded from challenging the validity of the acquisition by a writ action. Moreover, s 68 of the Malaysian LAA, which is *in pari materia* to s 53 of the 1987 LAA, barred the plaintiffs from seeking compensation for the market value of the land and for loss of income, because doing so amounted to bringing a suit to set aside the award made under the Malaysian LAA. Commenting on this case, Khublall suggests (at pp 28–29) that the plaintiffs should have initiated an action for *certiorari* (now known as a quashing order), on the ground that the acquisition was null and void for failing to comply with the relevant statutory provisions.

86 The second case, *Goh Seng Peow & Sons Realty Sdn Bhd v The Collector of Land Revenue, Wilayah Persekutuan* [1986] 2 MLJ 395 ("*Goh Seng Peow*"), on the other hand suggests that declaratory relief can be obtained in such a situation. There, the applicant-company became the registered owner of two lots of land in Kuala Lumpur in 1977. Whilst developing the land in 1984, the applicant was informed that the land had been compulsorily acquired. The applicant commenced an action by originating motion, alleging that the acquisition proceedings were null and void because the registered proprietor (that is, the applicant itself) had received no notice whatsoever of the purported acquisition proceedings and the necessary notices and documents had not been duly served upon the registered owner as required by law. The Collector raised a preliminary objection that the applicant's only remedy was an order of *certiorari* to quash the acquisition proceedings, but this remedy was not available in an action commenced by originating motion. The applicant argued in reply that the lands had been acquired in breach of natural

justice and Art 13 of the Malaysian Constitution, and the applicant would have been time-barred from applying for *certiorari*.

87 KC Vohrah J found that the acquisition had taken place in breach of the provisions in the Malaysian LAA and fundamental rules of natural justice, and possibly in breach of Art 13 of the Malaysian Constitution. He exercised the court's discretion to allow the applicant to "proceed with its application for a declaratory remedy in order to prevent injustice in this particular case especially when the only procedure", *ie*, *certiorari* proceedings, was "rendered unavailable to the applicant-company through effluxion of time by the default of the respondent" (at 396). Concerned that the applicant should not be "shut out *in limine*", the court overruled the preliminary objection. However, the court did not discuss the effect of s 68 of the Malaysia LAA or identify the source of its discretion to allow the application to proceed despite the prohibition in s 68.

88 *Goh Seng Peow* was subsequently considered by another High Court decision, *Lim Cheng Chuan Realty Co Sdn Bhd v Kerajaan Negeri Pulau Pinang* [1999] 4 MLJ 669, where a contrary conclusion was reached. The registered proprietor of the land filed an originating summons seeking a declaration that the acquisition of his land was null and void. A preliminary objection was raised that the action was barred by s 68 of the Malaysian LAA. The High Court considered whether an action for a declaration was a "suit" within the meaning of s 68 of the Malaysian LAA. The court concluded that it was, and held that *certiorari* was the only proper procedure for challenging an acquisition procedure because it necessarily had to be commenced expeditiously. If an action for a declaration could be brought to challenge the acquisition procedure, that would mean that the acquiring authority would have to "sit out the statute of limitations" before it could use the land acquired

(at 679). The intention of the Malaysian LAA, however, was that a challenge to the acquisition procedure should be made as soon as possible, otherwise not only the acquisition but also any subsequent disposal, use or dealing with the land by the acquiring authority may have to be invalidated. The disadvantage of invalidating an acquisition long after an acquisition far outweighed the advantage of allowing a landowner to circumvent the time limits imposed by the certiorari procedure, in part because a landowner had a means of overcoming the time limits for applying for an order of *certiorari* by accounting for the delay to the court's satisfaction (at 678).

89 In our judgment, s 53 of the 1987 LAA bars actions for declarations to set aside the Collector's award even where the cause of action is an alleged wrong in public law, such as a breach of natural justice. Such declarations aim to achieve, through the ordinary originating process, the effect of a quashing order, which is the primary and most appropriate remedy for achieving the nullification of a public law decision: *Cocks v Thanet District Council* [1983] 2 AC 286 and Clive Lewis, *Judicial Remedies in Public Law* (Sweet & Maxwell, 5th Ed, 2015) ("Lewis") at para 6–002. And a quashing order is in turn available only through the judicial review process, inherent within which are a number of protections for public authorities. These protections are described as follows in Lewis at para 3–006:

> … [T]here are specific protections incorporated into the judicial review procedure for the benefit of public authorities; these include the need to obtain permission which is intended to filter out unmeritorious or frivolous claims. There is a short time-limit for applying for judicial review, and the procedure itself is speedy. This protects the public interest in ensuring that public bodies and third parties are not kept in suspense as to the validity of a decision and the extent to which it could be implemented or relied upon. …

90 In the unusual case where an applicant seeks to challenge an acquisition or award on the basis of a breach of natural justice or a lack of notice and he or she has only learnt of the acquisition or award after its making, it may at first glance appear that such an applicant would be left without a remedy if he or she were confined to the judicial review process. The most obvious hurdle is the requirement in O 53 r 1(6) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) that applications for leave for judicial review be made within three months after the act which is sought to be quashed. However, this time may be extended if the delay is "accounted for to the satisfaction of the Judge": O 53 r 1(6) and see *Per Ah Seng Robin and another v Housing and Development Board and another* [2016] 1 SLR 1020 at [51] and [58]. An applicant in such a position would have at least an arguable case for a time extension. Further, in certain instances, there can no longer be prejudice to the government arising from an inability to use the land pending the applicant's challenge, such as the present case where Mr Ahmad does not seek to challenge the acquisition but only the Award. Therefore, an applicant who seeks to challenge an acquisition or award on the basis of a breach of natural justice would not usually be left without a remedy.

91 In the circumstances, given the bar in s 53 of the 1987 LAA, we are unable to grant Mr Ahmad a declaration that the Award is null and void and should be set aside, or to order that the Collector carry out a fresh inquiry.

Principles guiding compensation assessment if fresh inquiry were ordered

92 Since the principles for assessing compensation in this anomalous case were canvassed before us, we will say a few words about the broad principles that apply. If a breach of natural justice is established, we take the view that Mr Ahmad's remedy is to be placed in the position as if Mr Adam's estate had received an award of compensation in 1988, with the time value of the award

being accounted for through an appropriate adjustment or award of interest. This means that the Collector and the Appeals Board will be guided by s 33 of the 1987 LAA when assessing the compensation due to Mr Adam's estate. The relevant subsections of s 33 provide:

> **Matters to be considered in determining compensation**
>
> **33.**—(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall, subject to subsections (2), (3) and (4), take into consideration the following matters and no others:
>
> (*a*) the market value as at 30th November 1973, … or the market value as at the date of the publication of the notification made under section 5, whichever is the lowest;
>
> …
>
> (5) For the purposes of subsection (1)(*a*) —
>
> …
>
> (*e*) the market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the Master Plan, whichever is the lower, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act [Cap. 232] and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other more intensive use; and
>
> …

93 The parties do not appear to dispute that s 33 of the 1987 LAA, broadly speaking, applies. Although Mr Ahmad seeks "reasonable compensation" based on *Ng Kim Moi*, he accepts that the market value of the land is to be assessed as at 30 November 1973, the date of assessment stipulated by s 33(1)(*a*). Implicitly, therefore, he concedes that the scheme for assessing compensation

in s 33 of the 1987 LAA applies. In our view, this is an incontrovertible starting point. As the Respondents note, s 33 must govern the assessment of compensation because Parliament intended it to "set out a fully-comprehensive and exhaustive list of matters to be considered in determining compensation for land acquisition": *Ng Boo Tan v Collector of Land Revenue* [2002] 2 SLR(R) 633 ("*Ng Boo Tan*") at [52]. The legislative intention behind s 33(1) was to exhaustively codify the law on the issue of compensation, such that the relevant principles of compensation would be made plain on the face of the statute alone: *Ng Boo Tan* at [55]. And as far as s 33(1)(*a*) is concerned, the parties were in agreement that the applicable statutory date of assessment is 30 November 1973 because the market value on this date was lower than the market value as at the date of the gazette notification on 27 November 1987.

94 The real dispute is whether and how s 33(5)(*e*) applies, on the facts, when determining the market value of the House as at 30 November 1973. The question is whether the market value of the House is to be based on its then existing use as a residence or limited to its "continued use … for the purpose designated in the Master Plan". The "existing use" of a piece of land refers not to its static condition but to the use to which it is actively being put at the date of acquisition: see *Trustees of the Kheng Chiu Tin Hou Kong and Burial Ground v Collector of Land Revenue (Housing and Development Board)* [1992] 1 SLR(R) 117 ("*Kheng Chiu Tin Hou Kong*") at [27]. The existing use of the area of the Land occupied by the House was, thus, as a residence. The Land's zoning under various Master Plans, in contrast, was as follows:

(a) In the 1958 Master Plan, the Land was zoned "rural".

(b) In the 1976 Master Plan, the Land was re-zoned to "cemetery" use.

(c) This zoning for "cemetery" use was retained in the 1980 Master Plan and the 1985 Master Plan.

According to *Kheng Chiu Tin Hou Kong* at [5], the relevant Master Plan zoning under s 33(5)(*e*) is the zoning as at the date of acquisition, that is, 27 November 1987. On this date, the Master Plan designated the Land for "cemetery" use.

95 Since it is not necessary for us to resolve this dispute on the application of s 33(5)(*e*), and since the arguments on the applicable principles for compensation only arose in the context of Mr Ahmad's belated submission for a compensatory remedy which we have since rejected, we decline to provide any views on this dispute at this juncture.

Conclusion

96 For the reasons given above, we grant the declarations set out at [69] above but make no order on prayers 4 to 6 of OS 397. Accordingly, the appeal is allowed in part. We set aside the costs order below. Unless the parties are able to come to an agreement on costs, they are to furnish, within 21 days, written submissions limited to ten pages each, setting out their respective positions on the appropriate costs orders here and below in the light of the present judgment.

Sundaresh Menon	Andrew Phang Boon Leong	Judith Prakash
Chief Justice	Judge of Appeal	Judge of Appeal

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the first and second respondents unrepresented and absent;
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