IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1981] SGHC 16

OM 37/1979

Between

Intercontinental Properties (Pte) Ltd

… *Appellant*

And

Chief Assessor, Singapore

… *Respondent*

GROUNDS OF DECISION

Revenue Law — Property tax — Valuation list; Words and Phrases; Words and Phrases

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Intercontinental Properties (Pte) Ltd and Others v Chief Assessor, Singapore

[1981] SGHC 16

OM 37/1979
Chua F A J
26 August 1981

1 The owners of units in `Highpoint`, a twenty-one storey block of luxurious flats situated in Mount Elizabeth, Singapore, which comprises fifty-seven units of flats and two penthouses, appeal against the judgement of the Valuation Review Board (the Board).

2 The appellants do not dispute the annual values ascribed to their properties, the properties being assessed for the first time, but challenge the extent of their liability for back taxes.

3 Before the Board two issues were raised for determination, namely, (a) what is the effective date the valuation list should be amended under s 18(2) of the Property Tax Act (Cap 144) (the Act) to include the 57 flats and two penthouses; and (b) what is the date from which the Comptroller of Property Tax (the Comptroller) may recover taxes in respect of the said properties before their inclusion in the valuation list, under the provisions of s 19A of the Act?

4 The Chief Assessor has by notice under s 18(2) of the Act proposed that the valuation list should be amended to include all the units in `Highpoint` from

1 January 1975 or alternatively in respect of the penthouses only from 31 March 1975 while the Comptroller sought recovery of taxes from the date of the issue of the temporary occupation licences (TOLs).

5 The Board held that property tax is payable from 8 June 1974, in respect of the fifty-seven units of flats and from 8 December 1974, in respect of the two penthouses. 8 June 1974 was the date when TOLs were granted for the 57 units of flats and 8 December 1974 the date when TOLs were granted for the two penthouses. The Board further held that the chief assessor was at liberty to amend the valuation list to include all the flats and penthouses of `Highpoint` from 1 January 1975.

6 The facts are not in dispute and they are these.

7 Work on the construction of the building commenced sometime before 1970 and on 19 April 1974 the architects of the project wrote to the Building Control Div (BCD) of the Public Works Department notifying them that `construction works have been completed in accordance with the approved plans.` An application was made at the same time for a grant of a `Licence of Temporary Occupation` (TOL) for a period of six months `as it will take some time to obtain all the clearances from the various departments for our submission to you for a certificate of fitness.` The architects further informed BCD that `the project will be handed over to the owners from 1 May`. Accompanying this letter was the architect`s `certificate of supervision of building works` certifying his personal supervision of the erection of the building and that it is `in accordance with the relevant regulations, plans and specifications`.

8 Regulation 34(3) of the Local Government (Buildings) Regulations, 1966 (No S159/66) prohibits the occupation of new buildings `unless a certificate of Fitness for occupation has been issued for such building`. A proviso to that Regulation, however, confers on the chief building surveyor a discretion to grant a licence for temporary occupation for a period not exceeding six months `in cases where only minor deviations from the approved building plans in respect thereof have been made and pending full compliance with the requirements of the chief building surveyor before the issue of a certificate of fitness.`

9 Two site inspections of the building were made by Mr Yap Kwan Hwa, a building surveyor with the BCD on 2 May and 27 May 1974. On 8 June 1974 he granted TOLs for the fifty-seven units of flats only but not the penthouses as he discovered that there were `major deviations` from the plans in respect of the two penthouses, and for which no amendment plans had been submitted.

10 TOLs for six months were issued for the penthouses on 8 December 1974 after the submission of amended plans but they were not renewed for the period from 8 March to 6 September 1975.

11 On 5 August 1974 the architect in charge of `Highpoint` Mr Wee Chwee Heng, issued a `certificate of practical completion` of the project, the purpose of which was to enable the owner/developer `to take over the keys from the contractor`. According to Mr Wee, upon the issue of such certificate, the developer would notify the purchasers `to make their final payment and collect the keys and take possession of the flats`. This certificate covered the two penthouses notwithstanding his opinion that they were not fit for human habitation `because the walls were not plastered and painted, the sanitary fittings

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and taps were not fixed and the tiling works were not done and the build-in furniture were not installed.` These works were not carried out then because he was waiting for the approval of the amendment plans which was granted only in September 1975. Demolition of the non-approved staircases leading to the roof garden was completed on 27 October 1975. During demolition work `the penthouses were in a state of mess` he added.

12 When the TOLs for the penthouses were issued on 8 December 1974 the floors, walls, roofs, doors and windows i.e. `the structural elements` were completed, but not the finishes and services. After the demolition of the staircases and remedial works had been carried out TOLs for the penthouses were finally renewed on 20 July 1976.

13 It is necessary to examine the system of property tax. A tax on immovable property in Singapore is imposed by s 6(1) of the Act `upon the annual value of all houses, building, lands and tenements whatsoever included in the valuation list authenticated under s 13 of this Act and amended from time to time in accordance with the provisions of this Act.`

14 Section 9(1) of the Act imposes on the chief assessor a duty to prepare a list, known as the `valuation list`, of all houses, building, lands and tenements, which shall contain, inter alia, the annual value ascribed thereto. `Building` is defined in s 2 to mean, inter alia, any structure erected on land and includes any house, hut, shed or similar roofed enclosure, whether used for human habitation or otherwise.

15 The chief assessor is empowered by s 18(1) to amend the valuation list where it is or has become inaccurate in any material particular. The valuation

list is deemed to be inaccurate where any new building is erected (s 18(7)(c)) or where property, not exempted from the provisions of the Act, has not been included in the valuation list (s 18(7)(d)).

16 Payment of property tax on new buildings like `Highpoint` which has not been included in the valuation list, is governed by s 19 which provides as follows:

> *.(1) Subject to the provisions of sub-s (2) of this section, where any new building is erected and no action is taken in respect thereof for any reason whatsoever to amend the valuation list for the year in which the work of erecting such building, was completed, the tax in respect of such building shall, notwithstanding that such valuation list has not been duly amended under the provisions of s 18 of this Act, be payable from the date of completion of the work of erecting such building and such tax shall be calculated on the basis of the annual value or revised annual value, as the case may be, subsequently ascribed to such building in a subsequent valuation list.*
>
> (2) Where any part of the building which is under construction (whether divided laterally or horizontally) is used for the purpose of human habitation or otherwise before the work of erecting the building is completed and no action is taken in respect thereof for any reason whatsoever to amend the valuation list for the year in which such part of the building was used, the tax in respect of such part of the building shall, notwithstanding that such valuation list has not been duly amended under the provisions of s 18 of this Act, be payable from the date of use of such part of the building and such tax shall be calculated on the basis of the annual value or revised annual value, as the case may be, subsequently ascribed to such part of the building in a subsequent valuation list.

17 The issues before this court are these:

> (1) What is the effective date the valuation list can be amended by the chief assessor under s 18 to include the fifty-seven flats and the two penthouses?

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> (2) What is the date from which the Comptroller may recover taxes in respect of the fifty-seven flats and the two penthouses before their inclusion in the valuation list under s 19?

18 The contention of the appellants is this. For a flat to become a `building` within the meaning of s 9(1) three conditions must be satisfied, viz:

> (1) It is physically divided as a part of a building.
>
> (2) It is legally sub-divided as a part of a building under s 9(3) of the Planning Act (Cap 279).
>
> (3) That part and other divided parts of the building are legally owned by separate owners.

19 Then, argues counsel, the flat becomes a building of its own and capable of inclusion in the valuation list as a building. Before that a flat is a part of an uncompleted building and is incapable of being included in the valuation list. Counsel submits until the law gives a flat legal recognition as a separate sub-divided unit it cannot be included in the valuation list. However, says counsel, property tax is payable even before that legal recognition as a separate subdivided unit if it is used for human habitation before that date (s 19(2)). As to when it is used for human habitation it must be a question of fact in each case and not when it is capable of being used because the Act does not say so. Counsel says that there is no legal permission to dispose of the property then it is only fair that property tax is payable when it is actually used for human habitation.

20 In the case of `Highpoint` the main contractor more or less completed the main building in the middle of 1974 and the architects gave their certificate of practical completion. The first TOLs were issued on 8 June 1974 for the fifty-seven flats except the two penthouses. The TOLs for the two penthouses were issued on 8 December 1974. Subsequently the TOLs for the two penthouses

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were cancelled around March 1975 because it was discovered that there were certain deviations from the plans. Counsel submits that one cannot use the date of the TOLs because the Act does not refer to a TOL. Counsel says that during the period up to 1976 the main building as a twenty-one storey structure was not completed as a building. The erection of the building can only be said to be completed when the building works have fully complied with all the building regulations and the approved plans and that such compliances have been so certified by the BCD. Counsel submits that `Highpoint` was not completed as a building until 7 July 1976, when the BCD issued the notice of approval. Not only that there was no sub-division approved until 25 March 1977, but no strata title was issued until October 1977. There was therefore no legal obligation on the part of the buyers of the flats to complete the purchase and take possession until October 1977. In view of this, counsel submits, the commencing date of any part of the building, that is any flat, for the purposes of property tax should be the date when it is in fact actually used for human habitation as provided by s 9(2) of the Act and not when it is capable of being used.

21 To put it shortly the appellants` contention is that the effective date the valuation list can be amended by the chief assessor under s 18 is 7 July 1976 and the date from which the Comptroller can recover property tax is the date when the flat was in fact actually first used for human habitation.

22 The issue before the court (and before the Board) is, when does a new flat become a building for purposes of the Act for inclusion in the valuation list?

23 The appellants say that the word `building` in ss 19(1) and 19(2) of the Act refers to the entire structure and not to the individual flats within that structure. They say that under s 19(1) the chief assessor cannot enter the fifty-

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seven flats and the two penthouses into the valuation list under s 18(7)(c) until the entire structure is completed and that is 7 July 1976.

24 They also say that under s 19(1) the Comptroller has to wait until the entire structure is completed before he can collect property tax on any of the units notwithstanding that some of the units may have already been completed. In the case of `Highpoint`, the appellants say, the Comptroller has to wait for the completion of the two penthouses before he can tax the fifty-seven flats even though the fifty-seven flats were completed earlier. The appellants further say that the only instance the Comptroller can collect tax on completed flats in an uncompleted building is under s 19(2), that is when the units are used `for the purpose of human habitation or otherwise.`

25 The term `owner` under the Act does not mean legal owner (see s 2).

26 It is common ground that the flats in `Highpoint` were built for sale and, except for a few flats retained by the developers, were in fact sold to other purchasers. The persons whose names are entered in the valuation list as the `owners` of the flats are the purchasers of these flats notwithstanding, that the developers` name remains in the Land Title Registry records as the registered owner, as it is the purchasers of the various flats and not the developers who would be entitled to the rent if these flats are rented out. The Act is concerned with the beneficial ownership and not with the legal ownership. The term `owner` in s 9(3) must have the meaning given in s 2. The test of what is a building under s 9(3) is whether a building is divided physically in such a manner that each part is capable of separate and independent ownership then each part of the building shall be deemed a building under s 9(3). A flat which

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is capable of separate and independent ownership is a `building` within the meaning of s 19(1).

27 In my view, therefore, each unit of flat in `Highpoint` is deemed to be a `building` by virtue of s 9(3) and each unit must therefore be considered separately to determine its date of completion. It follows that, as a completed flat is a `building` by virtue of s 9(3), s 18(7)(c) may be used to enter the flats in the valuation list as and when they are completed. The word `building` appearing in s 18(7)(c) refers to a building that is capable of entering into the valuation list as one assessable entity and of being ascribed a single annual value as such. In the case of `Highpoint` it is not possible to ascribe an annual value to the structure as one assessable entity. It is, therefore, not a multi-storey structure which is entered in the valuation list but the various independent self-contained units within it. The various independent self-contained units are entered in the valuation list as `tenements` under s 9(1). A `tenement` has been defined to include a `flat` (See ***Stroud`s*** Judicial Dictionary, 4th Ed vol 5 p 2737).

28 What is the meaning of `date of completion of the work of erecting such building` in s 19(1)? It is only from that date that the Comptroller can collect property tax.

29 The phrase is clear and unambiguous. It means when the work of erecting the building is completed. To determine when the work of erecting the building is completed we have to look to the certificate by the architect and the engineer in charge of the building project as well as to the certificate by the BCD which is the government body in charge of issuing certificates of fitness and TOLs.

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30 The issue of a TOL for a building is a certificate by the BCD that the work of erecting the building is completed and that the building can be occupied.

31 The appellants` contention that a building is `completed` only when the building works have fully complied with all the building regulations and the approved plans and that such compliances have been so certified by the BCD has no basis in law.

32 The Act is not concerned with whether a building has been built in accordance with approved plans. An unauthorised building can be entered in the valuation list and be liable to property tax so long as the work of erecting that unauthorised building is completed.

33 The Board was correct in holding that the flats and penthouses were `completed` within the meaning of s 19 when TOLs were issued on 8 June 1974 for the flats and on 5 December 1974 for the penthouses.

34 It follows (1) that the inclusion of the fifty-seven flats and the two penthouses in the valuation list on 1 January 1975 is valid and (2) that property tax is payable from 8 June 1974 in respect of the fifty-seven units of flats and from 8 December 1974 in respect of the two penthouses.

35 The appeals are dismissed with costs.

36 ***Appeals dismissed***

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Chua F A J

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