

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 233

OS 71/1992

Between

Aaval Investments Pte Ltd

... Plaintiff

And

Ghariwala and another (both
trading as NP Ghariwala
(Singapore))

... Defendant

GROUND OF DECISION

Landlord and Tenant; Words and Phrases

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Aaval Investments Pte Ltd v Ghariwala and another (both trading as NP Ghariwala (Singapore))

[1992] SGHC 233

OS 71/1992

Michael Hwang JC

31 August 1992

1 Cur Adv Vult

2 The plaintiff is a developer which has applied for, and has been granted, an order under the Controlled Premises (Special Provisions) Act (Cap 60) (`the Act`) for possession of the premises known as No 53 Arab Street, Singapore (`the premises`). In granting the order for possession, the Tenants` Compensation Board (`the board`) ordered that the firm `NP Ghariwala` (of which the defendants claim to be partners) vacate the premises within 90 days, and that the plaintiff deposit with the board within 14 days the sum of \$38,000 (awarded as compensation) to be paid to `NP Ghariwala` after delivery of vacant possession. The board has clarified in its grounds of decision that the compensation was in fact awarded to the defendants pursuant to s 8 of the Act.

3 The plaintiff contends that the defendants are not entitled to compensation by reason of s 10(1) of the Act, and now applies to the High Court under s 18(1) to set aside the award of \$38,000.

4 **The meaning of s 10**

5 As this summons turns on the application of s 10 of the Act to the facts of this case, I will begin by setting out the provisions of that section and analysing what it means.

Circumstances where landlord not liable to pay compensation

(1) Notwithstanding anything to the contrary in this Act, a tenant or sub-tenant of the whole or part of the controlled premises in respect of which an order has been made by the Board under section 4 shall not be entitled to compensation, or any apportionment thereof, if -

(a) ***he has not been in continuous occupation of the controlled premises or part thereof at any time prior to 1st January 1968 ;***

(b) he has sublet the premises or any part thereof in breach of the terms of his tenancy with his landlord and his landlord has neither acquiesced in nor waived the breach; or

(c) he has been convicted of an offence under section 21 of the Control of Rent Act.

(2) ***In this section 'continuous occupation' means occupation of the controlled premises or part thereof prior to 1st January 1968 , which has not been interrupted for any period longer than 6 months, or for such further period, not exceeding two years, as the Board may, in any particular case decide, having regard to the reasons advanced by the tenant or sub-tenant for failure to occupy the controlled premises or part thereof. (Emphasis added.)***

6 If this section is read together with s 8 (which provides for the payment of compensation to tenants), it will be seen that the following factors need to be established in order for a tenant to claim compensation under the Act.

(1) He must be a 'tenant' or a 'subtenant' since, under s 8, compensation is payable only to tenants or subtenants. The term 'tenant' is defined in s 2 to mean:

the tenant of controlled premises [which is further defined to mean premises which are subject to the Control of Rent Act (Cap 58) and situated in a designated development area] in respect of which a tenancy exists and includes a statutory tenant

[which is further defined to have the same meaning assigned to that term in the Control of Rent Act] and in the case of a sub-tenancy, a sub-tenant to whom the controlled premises or part thereof is sublet. (Emphasis added.)

The words `in respect of which a tenancy exists` mean that, for the purposes of the Act, the claimant must be a tenant at the time the landlord's application for recovery of possession is made.

(2) The tenant must have been `in continuous occupation of the controlled premises or part thereof at any time prior to 1 January 1968`. These words can only be meaningfully construed in relation to a period that has a beginning and an end. It is plain that the occupation must have commenced prior to 1 January 1968, but the subsection does not expressly state how long that period is to last. It is possible to construe the words to mean that the tenant only needs to have been in continuous occupation within the meaning of s 10 for a period commencing some time before 1 January 1968 and ending at any time prior to that date. On this reading, if a tenant has been in occupation for only two days from (say) 30 December 1967 to 31 December 1967, he would be entitled to compensation if he happened to be a tenant at the date of the landlord's application, even if he had been out of occupation between 1 January 1968 and the date of the application.

I do not think this can be a correct interpretation. In the first place, the practice of the board has apparently been to require continuous occupation from prior to 1 January 1968, and not to consider applications for compensation from persons coming in thereafter, even if they have been in continuous occupation until the time of the application for recovery (see **Landlord and Tenant** (1st Ed, 1990) by Associate Professor Lye Lin Heng at p 370 and cases cited in fn 54, and also `The Controlled Premises (Special Provisions) Act - Some Reflections` by Associate Professor Tan Sook Yee in [1982] 1 MLJ xxiii at p xxv).

In the second place, such a reading is inconsistent with the reasoning of the unreported judgment of FA Chua J in **Chew Wing Kee v SL Development Pte Ltd** (Unreported) (judgment dated 6 November 1984 in Originating Summons No 66 of 1984), where he made a helpful analysis of certain provisions of the Act. In that case, the plaintiff-tenant applied for review of a decision of the board which had only awarded him compensation for that part of the premises `actually and continuously occupied by

him`, and had made no award for that part which he held as tenant but did not physically occupy (as he had sublet it since 1946). Since the judgment has not been reported, it is worth quoting from it at length (references in the judgment are to the 1970 Ed of the Act, some of whose sections have different numbers from the 1985 Ed).

Section 9(1) [equivalent to the present s 10(1)] begins with the words `Notwithstanding anything to the contrary in this Act ...`. It is plainly clear that all provisions of the Act, where applicable, must be read with s 9(1) and in the present case particularly s 9(1)(a).

Section 9(1)(a) is clearly intended to give a tenant or subtenant a right to full compensation if he should be in continuous physical occupation of the whole of the controlled premises or an apportionment of or part compensation for continuous physical occupation of a part of the said premises. Section 9(1)(a) refers to `compensation, or any apportionment thereof` in connection with continuous occupation `of the controlled premises, or part thereof`.

7 The Act is `An Act to provide for the recovery of possession of premises for development purposes where the premises are subject to control under the Control of Rent Act (Chapter 266).` The nexus between the Act and the Control of Rent Act shows that only persons in physical occupation of the premises are those protected and those affected by the Act. For example, s 27 of the Control of Rent Act confers statutory tenancy on the basis of a person in physical occupation. The board is to award compensation to the person who is in physical occupation.

8 Section 4(7)(b) of the Act [equivalent to the present s 4(7)(b)] provides that every tenant, subtenant and any person using or occupying the controlled premises shall **vacate** the controlled premises within 90 days of the making of the order of the board for recovery of possession. Section 4(8) [equivalent to the present s 4(8)] provides that upon **vacating** the controlled premises the compensation awarded by the board and deposited with it shall be paid to the

persons entitled to compensation or any apportionment thereof. Section 9A [equivalent to the present s 11] gives powers to the board to award compensation to an occupier who is neither a tenant nor a subtenant provided he has been continuously using or occupying any part of the controlled premises prior to 1 January 1968. The landlord may under s 10 [equivalent to the present s 12] make an ex gratia payment to any person (other than a tenant or subtenant) who is using or occupying any part of the controlled premises and not paying to the landlord any rent for that user or occupation under a tenancy and who is bound to vacate that part of the controlled premises consequent upon an order of the board made in favour of the landlord for the recovery of possession. These sections clearly show that physical occupation is the criterion of the Act.

...

9 Such recovery [of possession pursuant to the Act] can only be from the persons who are in actual and physical occupation of the premises concerned.

10 The construction of s 9(1)(a) must be that which is in line with the purpose of the Act and the intention of the legislature. (Emphasis in original.)

FA Chua J accordingly confirmed the order of the board. I respectfully agree with FA Chua J that physical occupation is the foundation of a claim for compensation. Although this was not expressly stated in the judgment, clearly it would have made no difference if the plaintiff had gone back into occupation of the subtenanted part of the premises on the day before the landlord's application for possession.

I have said earlier that a claim can only be made by a person who is a tenant at the time when the landlord's application is made. ***Chew Wing Kee Chew Wing Kee v SL Development Pte Ltd*** (Unreported) establishes that the tenant must also be in occupation when the application is made. In my judgment, it follows from these two propositions that, in order to claim

compensation, the tenant must be in continuous occupation of the controlled premises for a period commencing before 1 January 1968 and continuing (subject to the exceptions mentioned in s 10(2)) up till the date of the application (I will call this period 'the requisite period').

(3) In my judgment, although this is not expressly stated in s 10, the continuous occupation for the requisite period must also have been as tenant and not in any other capacity. The purpose of the Act is to grant compensation to tenants who have been in continuous physical occupation from before 1968. It would therefore be natural to expect the tenant's entitlement to compensation to be conditional upon his having occupied the premises as tenant for the requisite period, particularly since one of the bases of calculating quantum of compensation under s 8 would be the amount of rent paid (see s 8(1)(a) and (b)). The alternative interpretation would be that, so long as a person has been in occupation for the requisite period, whether as invitee, licensee, or even trespasser, and has paid only a licence fee (or even nothing at all) during that period, but has converted his occupation into a tenancy in (say) the last month before the landlord's application, he would be entitled to compensation. The latter view, while arguable as a matter of language, does not appear to be in keeping with the spirit of the Act as well as common sense. If in fact this alternative interpretation had been intended, it would have been a simple matter for the drafter of the section to have inserted appropriate words in s 10(1)(a) such as 'he has not been in continuous occupation of the controlled premises or part thereof (**whether as tenant or otherwise**) ...'.

(4) The remaining paragraphs of s 10(1) are not relevant for the purposes of this case, and I need not therefore dwell further on their meaning except to say that, where applicable, they would be grounds for disqualification of a claim by a tenant or subtenant.

11 Facts and arguments

12 I now turn to the facts of the case. According to the evidence of the defendants, well before the 1950s a family partnership was established under the name of 'NP Ghariwala' in India with a branch in Singapore. A partnership deed dated 5 January 1953 shows that, as early as 7 November 1949, the partnership had been carrying on business both in Surat in India as well as at the

premises in Singapore. The partnership originally had eight partners. Sometime in 1953 five of the eight partners withdrew. According to the second defendant, the three remaining partners then `appointed` their three sons respectively as partners in place of themselves (although the word `appointed` probably meant `admitted`). One of the new partners was Arvindkumar Dahyabhai Ghariwala (whom I will call `Mr Ghariwala Senior`), the husband of the first defendant and the father of the second defendant. In 1970 one of the three partners retired, and in 1985 another partner retired, leaving Mr Ghariwala Senior as the sole proprietor. In 1988 Mr Ghariwala Senior `appointed` his wife, the first defendant, as a partner. In 1989 Mr Ghariwala Senior (who was then near death) `appointed` his son, the second defendant, as a partner and he himself withdrew from the partnership and died a few days later. The second defendant gave evidence before the board to say that he had lived on the upper floor of the premises from the time he was born in 1959 until his family moved out some time in 1985 or 1986. The firm had been the tenant of the entire premises since at least 1953. Rent had been paid all these years and recent rent receipts in the name of `NP Ghariwala` were exhibited.

13 None of these facts were seriously challenged by the plaintiff and they appear to have been accepted by the board.

14 The plaintiff adduced evidence that, according to searches made in the Registry of Business Names and the Registry of Companies and Businesses, there was no firm registered under the name of `NP Ghariwala`. There was, however, a firm called `NP Ghariwala (Singapore)` which had been registered in 1975, and in the particulars of registration it was stated that the business of this firm commenced in 1970. There was no reference in the search documents to any earlier business activities of `NP Ghariwala (Singapore)`. The second

defendant was cross-examined by the plaintiff's counsel and made the following statements:

(a) the correct name of the firm that the second defendant had been referring to in his affidavits and evidence was either `NP Ghariwala` or `NP Ghariwala (Singapore)`, the two names apparently being used interchangeably; and

(b) since the firm was registered in the Registry of Businesses as `NP Ghariwala (Singapore)`, that was the correct name of the business.

15 The case of the plaintiff before the board was that `NP Ghariwala (Singapore)` was a firm that, according to public records, only commenced business in 1970, which was after 1 January 1968. The defendants were partners of `NP Ghariwala (Singapore)` and of no other firm, and therefore were excluded from claiming compensation by s 10(1)(a) as they had not been in continuous occupation of the premises since before 1 January 1968.

16 The case of the defendants appears from the second defendant's affidavit filed in the earlier proceedings, where he stated:

although there has [sic] been changes in the constitution of the firm, the business has throughout been carried on as a family business and all changes of partners have been within the family.

17 The defendants therefore contended that the two names referred to the same partnership. Accordingly, the defendants made their claim before the board in their own names `trading as NP Ghariwala (Singapore) formerly known as NP Ghariwala`. I will return to the significance of this later.

18 **Findings of the board**

19 The board did not accept the arguments of the plaintiff and I summarize its findings as follows:

(1) `NP Ghariwala (Singapore)` had been accepted by the plaintiff as tenants of the premises. Since a partnership is not a legal entity, the landlord had in effect accepted the defendants as the tenants of the premises. As the defendants had lived at the premises since 1953 until 1985 or 1986 and, at the time of the landlord's application, they were still occupying the premises for business purposes, they were entitled to compensation.

(2) It was irrelevant that the defendants were registered under the Business Registration Act (Cap 32) as carrying on business under the name of `NP Ghariwala (Singapore)`. Although the board did not say exactly why it was irrelevant (apart from commenting at the hearing that there may have been a mistake made when registering the partnership), I presume that the board felt this to be simply a matter of nomenclature, and that the different names referred to the same business.

(3) If the landlord had refused to acknowledge the defendants as tenants, they would still be entitled to claim compensation under s 8. The evidence was that the partnership of `NP Ghariwala` occupied the premises since 1953. A partnership can hold a tenancy: see ***Alagappa Chettiar v Coliseum Cafe***; ***2 NB Menon v Abdullah Kutty*** [1974] 2 MLJ 159 ***PM Hendry v George John De Cruz*** [1949] MLJ 79 ***Asmabai v Motilal Doshi & Anor*** [1960] MLJ 195. Property let to a partnership is let to all the partners. Mr Ghariwala Senior was one of the partners and, when he became the only surviving partner by virtue of the withdrawal or death of the other partners, he became the tenant of the premises as such surviving partner. Since his contractual tenancy was not terminated at the time of his death, his tenancy would have vested in his legal personal representatives, whom the board presumed would be the defendants. They would accordingly be contractual tenants and entitled as such to compensation.

20 **Analysis of the board's reasoning**

21 With respect, I am unable to agree with the reasoning of the board as to the applicable law in this case. If my earlier analysis of s 10 is correct then, while I cannot quarrel with the board on its findings of fact, in my judgment the

defenwould be disqualified by s 10(1)(a) because they would not have been in continuous occupation of the premises since prior to 1 January 1968, nor would they have been tenants since before that date.

22 The rent control cases which the board has relied on are not of great assistance because the issue in those cases was whether or not the occupier in question was, at the material time, actually the tenant. Under the control of rent legislation, so long as an occupier of controlled premises can claim to be a tenant (by whatever legal process) he is entitled to protection, even if he was not one of the partners who entered into the original tenancy agreement.

23 The issue in a claim for compensation under the Act is very different. It is correct that a partnership can hold a tenancy through its partners. It is also correct that the tenancy can devolve from the original partners to subsequent partners (whether by way of assignment, novation, surrender and re-grant or otherwise). However, those principles are of no relevance in an inquiry under s 10(1)(a).

24 As I have explained earlier, a claimant must not only be a tenant at the time of the application, he must also have been a tenant in continuous occupation of the premises qua tenant from before 1 January 1968. It is plain that neither of the defendants could have fulfilled that requirement. Although they were tenants at the time of the plaintiff's application, they had neither been tenants nor in continuous physical occupation since before 1 January 1968 until the date of the landlord's application.

25 As a partnership is not a legal entity, any tenancy must be held by the individual partners as natural persons. While new partners can acquire tenancy

rights granted to their predecessors in the circumstances I have described earlier in this paragraph, they do so as new tenants, not as the same tenants as their predecessors. There must be a new contract made, whether expressly or by implication, for the new tenancy to arise. Normally there will be a new contract between the landlord and the new partners; sometimes the new contract may take the form of an assignment of the old tenancy from the old partners to the new partners with the consent of the landlord. The new tenancy can be on the same terms as the old agreement with the former partners, but the new partners will still be new tenants. This is the distinction between a tenancy granted to a corporation (where the tenancy remains with the same tenant despite changes in shareholders of the corporation) and a tenancy granted to a partnership (which is merely a shorthand term for a tenancy granted to the present partners of a firm).

26 The ordinary principles of contract and real property law apply to partners (see *Lindley and Banks on Partnership*

27 (16th Ed, 1990) at paras 18-59). If a tenancy agreement is entered into with a firm, it does not mean that succeeding partners of that firm will automatically become tenants; each partner must acquire fresh tenancy rights from the landlord, either expressly or by implication. This is illustrated by *PM Hendry v George John De Cruz*,⁴ where Spencer-Wilkinson J discussed the meaning of a clause in a tenancy agreement prohibiting subletting to a 'third party'. He said (at p 81):

The expression 'a third party' can, in the agreement in question, only mean someone other than the parties to the agreement; and, in this instance, since the agreement is made in the firm name, that can only mean somebody who was not a partner in the hotel at the time the tenancy agreement was made. (Emphasis added.)

28 In other words, a person who became a partner in the hotel after the tenancy agreement was entered into would be `a third party` and not a tenant.

29 There is no direct evidence as to whether the partnership of `NP Ghariwala` (by which term I mean to include `NP Ghariwala (Singapore)`) was governed by Indian law or Singapore law, although, by the time that Mr Ghariwala Senior made the defendants partners, Singapore law was probably applicable, since all the partners were in Singapore. In any event, in the absence of any evidence as to Indian law, I am bound to apply Singapore law (see ***Dicey and Morris on The Conflict of Laws*** (11th Ed, 1987) at p 217).

30 When Mr Ghariwala Senior was left as the only partner of the firm in 1985, he became its sole proprietor, and the partnership came to an end by operation of law. When he admitted the first defendant a partner in 1988, he was in law commencing a new partnership, albeit with the same name, and it was this new partnership that the second defendant joined in 1989. Accordingly, even if `NP Ghariwala` had been paying rent and been recognized as tenants of the premises since 1953 until the date of the plaintiff's occupation, it is clear that there were at least two different firms by that name occupying the premises successively, and not one firm continuously. This is perhaps a digression: the important point is that the defendants only became partners of the firm which the board found to be tenants at the time of the plaintiff's application as from 1988 and 1989 respectively. Their respective tenancies could therefore only have commenced (at the earliest) as from those dates. The tenancy and occupation of the former partners of `NP Ghariwala` (whether one firm or two) could not be treated as their own tenancy and occupation.

31 To sum up, the board's first finding is wrong in law because:

(a) the break in occupation of the defendants between 1985/1986 and the respective dates when they became partners in 1988 and 1989 means that they had not been in continuous occupation for the requisite period;

(b) furthermore, they had not been in continuous occupation for the requisite period as tenants, since their occupation from the 1950s till they moved out in 1985/1986 was as members of the family of Mr Ghariwala Senior and without payment of rent; and

(c) in any event, they had only become partners of `NP Ghariwala` (whether this meant the old firm or a new firm) in 1988 and 1989 respectively and could not treat the tenancy and occupation of the former partners as their own tenancy and occupation.

32 The board`s second finding is not an independent finding, but rather part of its reasoning for its first finding, and I need not comment on it apart from saying that I accept it for the purposes of my conclusions.

33 I now turn to the board`s third finding. I have a difficulty here since I have no power to review the board`s findings of fact (see s 18(1)) and I am faced with a situation where the board has already, in its first finding, decided that the defen, as the present partners of `NP Ghariwala (Singapore)`, had been accepted by the plaintiff as tenants of the premises. The third finding is really an alternative finding to the first, but without conceding that the first finding was wrong. If I am bound to accept the first finding, then I have no factual basis for reviewing the third finding because, so long as the defendants are accepted to be tenants of the premises in their own right, it is clear that they cannot fulfil the requirements of a claim for compensation under s 8 read with s 10. However, on the assumption that I should make a finding of law on the alternative finding of the board, I will state the legal position as follows.

34 The board conceded that there was no evidence that the defendants were the personal representatives of the estate of Mr Ghariwala Senior. In the circumstances, I do not think that it was correct in law for such an assumption to be made. The deceased may or may not have made a will; if he did, he may have appointed other persons as executors, or the defendants (if appointed) may have renounced probate. Similarly, if no will had been made, the defendants may have renounced administration or may simply not have applied for letters of administration. Furthermore, the defendants made their claim for compensation in their own names `trading as NP Ghariwala (Singapore) formerly known as NP Ghariwala`. They made no claim to be personal representatives of the estate.

35 Accordingly, I do not think that the board`s third finding is sustainable in law.

36 For all these reasons the defendants` claim for compensation would be barred by s 10(1).

37 **Alternative ground under s 11(1)**

38 In its grounds of decision the board also stated that, if the defendants were neither the legal representatives of Mr Ghariwala Senior`s estate nor the present tenants of the premises, they would be entitled to claim compensation under s 11(1) of the Act. This subsection provides:

Power of Board to award compensation to occupiers

*Notwithstanding anything in this Act or any written law or rule of law, but subject to this section and section 10, the Board may in its discretion award compensation **to a person who is neither a tenant nor a sub-tenant** if that person (referred to in this Act as the occupier) -*

(a) ***has been continuously using or occupying any part of the controlled premises prior to 1st January 1968 ;***

(b) has been paying to the landlord or a tenant, as the case may be, a sum of money, whether described as rent or not, as consideration for the use or occupation of such part of the controlled premises under an arrangement that does not constitute a tenancy;

(c) is not by reason of such use or occupation in breach of any of the terms of a tenancy made between the landlord and the tenant, or if he is, the breach has been waived or acquiesced in by the landlord;

(d) is bound to vacate such part of the controlled premises consequent upon an order of the Board made in the landlord's favour under section 4. (Emphasis added.)

39 My analysis of s 11(1) is that the following ingredients must be satisfied before entitlement to compensation can be established:

(1) A claimant must not be a tenant or subtenant at the time of the landlord's application (and probably not at any time during the period of occupation).

(2) The claimant must have been in continuous use or occupation of some part of the controlled premises from prior to 1 January 1968 to the date of the landlord's application.

(3) The claimant must have been paying some consideration throughout the period of such use or occupation.

(4) The claimant's use or occupation must not be in breach of the main tenancy agreement unless the breach has been waived or acquiesced in.

(5) The claimant must be bound to vacate the controlled premises pursuant to an order of the board.

40 My reason for the conclusions expressed in sub-paragraphs (1), (2) and (3) above is that they would bring the interpretation of s 11 into broad conformity with s 10(1)(a). It appears reasonably plain from the structure of the Act that the intention is to compensate occupiers who have been in occupation

for the same requisite period which is applicable to tenants and subtenants, namely, from any time prior to 1 January 1968 until the date of the landlord's application. Section 10 is meant to compensate tenants and s 11 is meant to compensate contractual occupiers other than tenants; apart from this difference, the wording of s 11(1)(a) indicates strongly that the requisite period of occupation for s 11 is the same as for s 10.

41 The board's reasons for its finding were as follows.

They [the defendants] have been staying at the controlled premises for [sic] since 1953, and after 1986 they have been using it for the carrying on of a business which was owned by [Mr Ghariwala Senior] until 9 August 1989. Although the rent receipts are issued in the name of NP Ghariwala, they are nevertheless the persons who paid the rent after the death of [Mr Ghariwala Senior].

42 On this basis, the board held that the defendants had fulfilled the requirements of s 11(1).

43 Again, I have the same difficulty in reviewing this finding as I did with the board's third finding justifying compensation under s 8. The board has already, in its first finding, decided that the defendants were tenants and entitled as such to compensation under s 8. Its alternative finding under s 11(1) is postulated on the assumption (but not the concession) that its earlier finding was wrong. In any event, I agree that the defendants were tenants of the plaintiff at the time of the plaintiff's application and, as tenants, they are disqualified from claiming compensation by reason of s 10(1)(a). On this basis, there is no room for the application of s 11(1), since that section only applies to non-tenants, and this should be sufficient grounds for me to set aside the alternative finding. However, for the sake of completeness, I will deal with the alternative finding under s 11(1).

44 Although the board has stated that the defendants had been staying at the premises since 1953 (in fact the second defendant was only born in 1959), that occupation was obviously without payment of any consideration as far as they were concerned, since their occupation up till 1985 or 1986 was as members of the family of Mr Ghariwala Senior, and rent was paid by the firm during that period of their occupation. Assuming that the defendants are treated as having paid consideration for their occupation as from the time when they became partners of the firm (but ex hypothesi not tenants of the plaintiff) there would still be a break in occupation between their move out of the premises in 1985 or 1986 to the respective times that they became partners in the firm. For the reasons I have stated earlier, it cannot be argued that, once the defendants became partners of the firm, they could claim that the previous occupation of the premises and the consideration paid by the other partners of the firm could be treated as their own occupation and consideration.

45 Whichever way I look at it, the board's reasoning does not get round the difficulty that the defendants, whatever their status, have not occupied the premises for the requisite period and paid consideration throughout that period.

46 Accordingly, even on the basis of the board's alternative grounds of award, neither of the defendants would qualify under s 11(1) as they would not meet the requirements of sub-paragraphs (2) or (3) mentioned earlier, and are therefore not entitled to compensation.

47 Counsel for the defendants raised an apparent anomaly arising from this interpretation. What would happen, he asked, to a person who had been in continuous occupation from before 1 January 1968 to the present, but for part of that period as (say) a licensee paying licence fee, and for the remaining part

of that period as a tenant paying rent? Such an occupier would fall between two stools and be disqualified under both sections. I acknowledge that this might be the position under my interpretation, but can only say that the drafting of ss 10 and 11 does not cover all contingencies. The situation postulated by him might well lead to the result he describes, since I do not think that the sections as drafted envisage anything other than one type of occupation throughout the requisite period. However, even if this is considered an anomaly, it is not the fact situation in the present case. In my judgment, the Act as drafted simply does not contemplate compensation of any kind for people in the position of the defendants, except under s 12 on an ex gratia basis.

48 Although s 18(1) requires the High Court to call for the proceedings, it is not necessary for me to make a formal order to that effect since the verbatim transcript has already been attached to one of the plaintiff's affidavits, and the board has furnished its grounds of decision. I therefore set aside the board's order that compensation of \$38,000 be paid to `NP Ghariwala` and, as the money has been deposited with the board and has apparently not yet been paid to the defendants, I direct that this sum be refunded by the board to the plaintiff. This of course does not affect the validity of its order for recovery of possession, which, in any event, is not the subject of the plaintiff's application for review. I also award costs to be taxed if not agreed. ***Application allowed.***

Michael Hwang JC

*Aaval Investments Pte Ltd v Ghariwala and another (both trading as NP Ghariwala
(Singapore))* [1992] SGHC 233

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