

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 187

OM 55/1994, 56/1994

Between

Lee Tat Development (Pte) Ltd

... Appellant

And

Chief Assessor

... Respondent

GROUND OF DECISION

Revenue Law — Property tax

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Lee Tat Development (Pte) Ltd v Chief Assessor

[1995] SGHC 187

OM 55/1994, 56/1994

Chao Hick Tin J

01 August 1995

1 These are two appeals against the decisions of the Valuation Review Board which upheld the Chief Assessor's dismissal of the appellants' objections to two valuation notices issued by the Chief Assessor under s 20 of the Property Tax Act (Cap 254) ('the Act').

2 The matter in respect of which the appeals arose concerns two adjacent properties, lot 111-32, measuring 27,866 sq feet, and lot 111-33, measuring 101,435 sq feet, both of which are located in TS21 and are zoned residential. A house bearing address No 7 Grange Road stands on lot 111-32 and two houses Nos 231-1 and 25 Grange Road stand on lot 111-33. The appellants bought the two properties in 1973. All the three houses were then rent-controlled. In 1976 the tenant of house No 25 vacated the premises and in 1981 the tenant of house No 23-1 did likewise. Therefore, by 1981, both houses which stood on lot 111-33 ceased to be rent-controlled. Since then they have been occupied rent-free by the appellants' gardener and watchman and their families. In the case of lot 111-32, the house No 7 has to-date remained occupied and rent controlled.

3 As at 1 January 1990 the annual value of house No 7 was assessed at \$1,267, house No 23-1 at \$1,900 and house No 25 at \$8,250. These assessments were based on the rents payable by the tenants (in the case of houses Nos 23-1 and 25 on the rents paid by the then tenants). On 14 March 1990 the property tax due on the three houses, based on the said annual values, were paid by the appellants.

4 However, in the meantime, on 19 February 1990 the Chief Assessor issued a valuation notice under s 20(2) of the Act (first notice) proposing an annual value of \$2,222,000 for the two properties with effect from 1 January 1990 on the basis that both properties were regarded as land. Under s 20(1) of the Act the Chief Assessor is empowered, where it appears to him that any valuation list is or has become inaccurate in any material particular to amend the valuation list. In accordance with s 20(3) the appellants were given 21 days to lodge objection. Apparently this notice was not received by the appellants as the evidence adduced before the Board would appear to show. But on 24 March 1990 the appellants received a notice of demand dated 19 March 1990 requiring the appellants to pay property tax in respect of the two properties based on the proposed annual value of \$2,222,000. As a result of the appellant's claim that they did not receive the first notice, an extension of time was granted by the Chief Assessor to the appellants to file their objection which they formally did on or about 1 April 1991. The objection was considered by the Chief Assessor.

5 On 15 November 1991 the Chief Assessor proposed to amend the valuation list by making separate assessments for the two properties: lot 111-32 at an annual value of \$505,000 and lot 111-33 at \$1,838,000, both with effect from 1 January 1991. Objections were filed on 4 December 1991 to both the proposed revaluations of \$505,000 and \$1,838,000. On 22 April 1993 the appellants were informed that objection to the valuation notice affecting lot 111-

33 was rejected. But on 7 May 1993 the Chief Assessor withdrew the valuation notice affecting lot 111-32 for \$505,000.

6 On 10 May 1993 the Chief Assessor, in response to the appellants' objection to the first notice, revised the proposed annual value of lot 111-33 downwards to \$1,740,000 with effect from 1 January 1990. Also on the same day the Chief Assessor again notified the appellants that their objection to the proposed revaluation of lot 111-33 at \$1,838,000, with effect from 1 January 1991 had been disallowed.

7 The net result of the foregoing convoluted state of events is this. The Chief Assessor had decided that in respect of lot 111-33 the annual value was to be \$1,740,000 wef 1 January 1990. This annual value was revised upwards to \$1,838,000 wef 1 January 1991. The appeals to the Valuation Review Board and now to the High Court concern these two valuations. I should add that the appellants are not contesting the figures of \$1,740,000 and \$1,838,000 as such; they are saying it was wrong for the Chief Assessor to assess annual value based on 5% of the estimated value of lot 111-33. No change is made to the annual value of lot 111-32 on which house No 7 stands; its annual value remains as before at \$1,267. Nothing in these appeals concerns that lot.

8 Before this court, as well as before the Board below, the appellants also took the procedural point that as the first notice (dated 19 February 1990) was not received by the appellants, all subsequent proceedings are void and of no effect.

9 **Service of notice**

10 I shall first deal with the point on the service of the notice. Under s 20(2) of the Act, the Chief Assessor `shall give notice ... to the owner` of the property concerned if he wishes to amend any valuation list. Section 57(1) provides, inter alia, as follows:

*Every notice ... required ... to be served on any person **may be served** -*

(a) by delivering it to that person ... ;(b) by leaving it at the usual ... ; or (c) by forwarding it by prepaid post in a letter addressed to that person at his usual or last known place of abode or business.

11 Another pertinent provision is s 2(4) of the Interpretation Act and it reads:

Where an Act authorises ... any document to be served by post, ... then, unless a contrary intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the document, and, unless the contrary is proved, shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

12 Quite clearly service of the notice may be done by ordinary post. But the appellants have adduced evidence before the Board to show that they did not receive the valuation notice of 19 February 1990. The arguments before the Board, as well as before me, centred on the question whether there was evidence on posting, as required under s 2(4) of the Interpretation Act.

13 There was evidence before the Board of the assistant assessment officer, Mr Sidek Bin Jamaluddin, who stated in his affidavit that it was one of his duties to organise the insertion of valuation notices into envelopes for mailing to taxpayers. At the time his department used a machine to fold, insert and seal the large volume of valuation notices printed for mailing to taxpayers. The computer-printed notices were accompanied by computer printed lists, which

would contain, inter alia, the names and addresses of the taxpayers corresponding to those stated on the valuation notices. He would check the number of envelopes sealed against the computer list and the first and last envelopes would be checked to confirm that they showed the same names and addresses of the first and last addressees on the list. Mr Sidek further deposed that on that day in question the relevant computer-printed list accompanying the valuation notices showed that only two valuation notices were sent, one to the appellants and the other to another property owner. He would have checked both envelopes to ensure that they were correctly inserted for mailing. The other property owner received the notice because he acknowledged receipt and had also filed an objection to the Chief Assessor. In his evidence before the Board Mr Sidek said that he put the two envelopes in a sack and gave it to an office assistant for posting.

14 On these facts the Board drew the inference that the envelope containing the valuation notice to the appellants was duly posted.

15 Mr Wu's contention here is that there was no direct evidence of the fact of posting at all. He relied in particular on our Court of Appeal decision in ***Tan Kia Poh & Anor v Hong Leong Finance Ltd*** where the appellate court, having noted on the evidence that there was no direct evidence that any particular individual had posted the letter of revocation and there was evidence that it was not received, refused to disturb the finding of the trial judge that posting had not been proved. In my view, the fact situation and the issue in ***Tan Kia Poh*** were not quite the same as the present case.

16 Here the Board made a finding of fact based on an inference. The primary facts on which the inference was drawn are not in dispute. Mr Sidek having checked the names and addresses on the two envelopes, placed the two

envelopes in a sack and handed it to an office assistant for posting. The other envelope was received by the addressee. In the circumstances, was it reasonable for the Board to have drawn the inference? I do not think every fact must be explicitly proved: certain facts may be inferred from primary facts. Mr Wu submitted that those facts do not necessarily suggest that the envelopes addressed to the appellants must have been posted - there could be a number of possibilities. In my view the test is on 'balance of probabilities' not 'possibilities'. It really boils down to determining whether the inference is reasonable. It need not be the only inference. I have no hesitation in holding that the inference drawn is reasonable and would uphold it.

17 In any event, I think this is a non-issue. Under s 20(2) the Chief Assessor is required to give notice of the proposed amendment to the property owner. The purpose of that is to enable the property owner to object and be heard. Here the evidence shows quite clearly that the appellants were aware of the proposed amendments about a month later. Extension of time was given for objection to be filed by the appellants and the objection was considered by the Chief Assessor. In my view the Act has been complied with.

18 **Are the revaluations proper?**

19 I now turn to the second question: whether in all the circumstances it is proper for the Chief Assessor to assess the annual value based on s 2(b)(ii) when it is still possible to determine the rents at which houses No 23-1 and 25 could reasonably be expected to be let from year to year. Mr Wu submitted in the negative. He emphasised that under s 2 of the Act the expected reasonable rental is the primary method for determining the annual value of a 'house or building or land or tenement'; it is only when it is no longer possible or practical to use

that primary method that the Chief Assessor may resort to the secondary method of basing it on 5% of the estimated value of the land.

20 It may be useful if I should at this juncture set out that part of the definition of `annual value` as is pertinent to the case:

`annual value`, as used of a house or building or land or tenement, not being a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes; and, as used of a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the tenant paying the expenses of repair, insurance, maintenance or upkeep:

21 Provided that -

...(b) in assessing the annual value of any property, the `annual value` of the property shall, at the option of the Chief Assessor, be deemed to be the annual value as hereinbefore defined or the sum which is equivalent to the annual interest at 5% - (i) on the estimated value of the property, including buildings, if any, thereon; or (ii) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon;

22 A case very much relied upon by the appellants is **Chief Assessor v National Shipbreakers Pte Ltd**. However, the facts there were quite different. There the parties had agreed that the most appropriate method to adopt in determining the annual value was the `contractor`s test` or `contractor`s basis` of valuation. The dispute was as to how this method was to be applied in Singapore in the context of the definition of `annual value` in s 2. The respondent contended that the contractor basis, as it was known in England, had been incorporated into the Act in the form of the option set out in proviso (b)(i) in s 2. The court there had to decide two issues: (i) whether s 2(b)(i) of the Act was the contractor`s basis and (ii) how the contractor`s basis should be applied.

After examining what was the contractor's basis and the meaning of s 2(b)(i) and their differences, and in particular the submission of the Chief Assessor that s 2(b)(i) is an option which is to be applied at the discretion of the Chief Assessor, usually when other established methods under the primary definition are not appropriate, Chua J said (at p 8):

In my view s 2(b)(i) is, as contended by the appellant, a last resort formula to be applied when any of the methods based on the primary definition is not appropriate. When it is to apply and to what cases it is appropriate, the sole discretion belongs to the Chief Assessor. The discretion is only as to which is the proper method to apply depending on the facts of the particular property.

23 He held that it was wrong to interpret s 2(b)(i) as the contractor's basis.

24 It would be noted that while Chua J used the expression 'a last resort formula' he went on to explain what that meant: 'to be applied when any of the methods set out in the primary definition is not **appropriate**'. It is significant to note that he used the words 'not appropriate' and not 'impossible' or 'impracticable'. I would accept that ordinarily the method of determining annual value should be based on that set out in the primary definition in s 2. But I do not think I could add any further qualification to that without doing violence to the plain words of s 2(b) - 'in assessing the annual value, the annual value ... shall, at the option of the Chief Assessor, be deemed to be the annual value as hereinbefore defined **or** the sum which is equivalent to the annual interest at 5% ...'. I believe this aspect of the matter was clearly in the forefront of Chua J's mind when he said, 'when it (namely, s 2(b)(i)) is to apply and to what cases it is appropriate, the sole discretion belongs to the Chief Assessor'. I do not think much should be made of the label 'a last resort formula' used by the learned judge.

25 As regards Mr Wu's argument that the Chief Assessor should not resort to proviso (b)(ii) unless it is impossible or impractical to determine the 'gross amount at which the (property) can reasonably be expected to be let from year to year', I would first observe that he conceded that by virtue of the fact that the two houses on lot 111-33 are no longer rent-controlled, the Chief Assessor is entitled under s 20(1) to amend the valuation list to correctly reflect the rental which the houses could reasonably be expected to fetch in the open market at this time. In this regard the appellants have tendered expert evidence to show that the two houses, though not in fact rented out, could fetch \$42,000 and \$180,000 per annum respectively. Counsel argued that the fact that the two houses on lot 111-33 ceased to be rent-controlled, did not change the character of the property. The houses were and are capable of being rented out. Counsel emphasised that what is annual value under the definition is not what is the actual rent received but what 'can reasonably be expected to be let', a hypothetical situation. Counsel submitted that in view of the fact that the appellants' valuers' valuation based on expected rental was not disputed by the Chief Assessor, it follows that the valuation is correct, and it should have been applied by the Chief Assessor to determine the annual value. Thus, the Chief Assessor has acted wrongly when he refused to compute the annual value on that basis.

26 I should add that the appellants' counsel has put the issue as one of construction simpliciter. He is not contending that the Chief Assessor has not given consideration to the appellants' suggestion that the annual value be based on the hypothetical tenant and hypothetical rent. He recognised that he would have no basis in making such an assertion.

27 Taking the issue as a pure construction point, I am afraid the appellants must fail. The wording of proviso 2(b) is clear. I do not think one can reasonably

make it clearer without being pedantic. It says the Chief Assessor has the option to choose between -

(a) `the annual value as hereinbefore defined,` namely, as defined in the main definition; or (b) the annual value based on 5% of the estimated value of the property or land.

28 Here I think it would be appropriate to remind ourselves of what Chua J said: `when it is to apply and to what cases it is appropriate, the sole discretion belongs to the Chief Assessor.` The fact that there are two houses on the land does not preclude the Chief Assessor from acting under s 2(b)(ii); it expressly contemplates that kind of situation. I do not see how one can read into that provision the restriction that valuation based on 5% of the estimated value of the land can only be resorted to if it is impossible or impractical to adopt the hypothetical rental basis. To do that is to read more into the provision than is warranted by the plain words; this court would in effect be usurping legislative functions.

29 I would agree that in exercising the power under s 2(b), the Chief Assessor has to act fairly, and subject to that, it is for the Chief Assessor to decide in all the circumstances which method of determining the annual value would be appropriate. The issue before me is not whether the Chief Assessor has given due consideration to the objection of the appellants. I need say no more on that. I repeat: what the appellants are saying is that the Chief Assessor is wrong in law to have decided the way he did. For the reasons above, I cannot accept that submission.

30 The construction which I have placed on s 2(b) is certainly consistent with the purpose and object of that provision. Under s 9(A)(1) of the Interpretation Act, the courts are required to interpret a written law in a way

which would promote the purpose or object underlying that written law, irrespective of whether that purpose or object is expressly stated in the written law or not. By s 9(A)(2) and (3), the court may refer to the speech made in Parliament by the Minister, on the occasion of the second reading of the Bill containing the provision, to determine the proper construction. The speech of the Minister on 30 December 1965 at the second reading of the Property Tax (Amending) Bill, which introduced the amendment relating to proviso (b), contained the following statement:

*The amendment will make it clear beyond doubt that the Chief Assessor may adopt an annual value of five per cent of the capital value of any property **whether vacant land, land with buildings erected thereon, or land with buildings being erected thereon.** [Emphasis added.]*

31 In concluding I wish to add that on the facts of the present case, it seems to me clear that there are grounds for the Chief Valuer in deciding to choose 5% of the estimated value of the land as the basis to determine annual value. Both the houses have become de-controlled since 1981. From that time onwards they have not been rented out but have been used by the appellants' caretakers. The buildings are in various stages of disuse and disrepair. There was clearly no intention to rent out the two houses. Furthermore, since 1980 the appellants have made several applications seeking approval to develop the land jointly with lot 111-32. The first provisional approval was granted on 11 September 1980. There is also evidence that lot 111-33 is capable of independent development. The business of the appellant company is a real estate developer. In these circumstances, I do not see how I can fault the Chief Assessor for having decided that an assessment based on 5% of the value of the land is more appropriate. In my judgment, the Chief Assessor has acted entirely within the powers granted to him under the Act.

32 In the result the appeals must be dismissed. The respondent shall be entitled to one set of costs.

33 **Appeals dismissed.**

Chao Hick Tin J

CS Wu and Jimmy Yap (Donaldson & Burkinshaw) for the
appellants
Leung Yew Kwong and Tham Siok Peng (Inland Revenue Authority
of Singapore) for the respondents
