IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 56

OM 19/1995

Between

Pakari Kothandapani

… *Applicant*

And

DK Development Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Landlord and Tenant — Termination of leases; Landlord and Tenant — Termination of leases; Words and Phrases

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Pakari Kothandapani v DK Development Pte Ltd

[1996] SGHC 56

OM 19/1995
Chao Hick Tin J
30 March 1996

1 The applicant is the occupant and tenant of a two-storey shophouse (hereinafter referred to as `the tenant`) known as No 119, Upper East Coast Road. The shophouse falls within Lot Nos 2217 and 2219 of Mk 27 and is rent-controlled. Also falling within the two said lots are the two adjacent houses Nos 117 and 121. In other words, all three shophouses fall within the said two lots, which are owned by M/s DK Development Pte Ltd, having bought them in 1993.

2 The applicant has been a tenant since 1955 and is carrying on the business of a hairdressing saloon on the ground floor of the said shophouse. The second floor is being used by the tenant and his family as their residence. The tenant pays a monthly rent of $40.

3 On 14 February 1995, the owners, M/s DK Development Pte Ltd (hereinafter called `the landlords`), obtained written permission from the competent authority under s 10(1) of the Planning Act (Cap 232) to develop the said shophouse, namely, additions and alterations to the existing shophouse in accordance with the plans submitted.

4 On 28 February 1995, the landlords` architect submitted to the Chief Planner an application for approval of the plan of development under the Controlled Premises (Special Provisions) Act (Cap 60) (hereinafter called `the Special Provisions Act` or `the Act`). At the same time the landlords executed a declaration stating that they would carry out these works:

> *Roof - improvement to the roof including re-roofing or replacement of structural members.*
>
> Walls - repairs and/or replastering.
>
> Facade - repair/replacing facade beams/columns.

5 On 29 March 1995, the URA informed the landlords that their plan of development was approved for the purposes of the Special Provisions Act.

6 On 21 April 1995 the landlords made an application (No 49/95) under the Special Provisions Act to the Tenants` Compensation Board (the Board) for an order to recover possession of the premises on the ground that the landlords intended to develop the land and had obtained written permission to effect the same.

7 The tenant opposed the application for possession. He deposed that the landlords, who as mentioned above also own the adjacent houses No 117 and 121, intended to sell all three properties. He deposed that a sale sign was placed thereat. The tenant had also obtained the opinion of an engineer who, after examining the premises, gave a report stating that the building is generally in good condition. The tenant applied to the landlords for a copy of the approved plan but that request was not acceded to. The tenant submitted that the bona fides of the landlords to develop the land was open to doubt - that the plan of

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development was only a device to evict him, obtain vacant possession and sell at a higher price.

8 On 14 July 1995, after hearing submission from the parties, the Board granted the landlords` application to recover possession of the premises and awarded the tenant a sum of $55,000 as compensation. The Board also turned down the tenant`s application for discovery of the landlords` application form to the competent authority for development and the approved drawing.

9 It is not in dispute that the shophouse falls within a designated development area but it does not come within a conservation area.

10 By this originating motion the tenant applies to the High Court, pursuant to s 18 of the Act, to have the decision of the Board stayed and set aside on the ground that it is wrong in law. The tenant is not challenging the quantum of compensation awarded. The main facts relied upon to substantiate his contention are the following:

> (i) The refusal by the landlords to furnish to the tenant the application form and plan submitted by the landlords to the planning authorities.
>
> (ii) The landlords do not really intend to develop the land but to sell with vacant possession.
>
> (iii) The works proposed to be undertaken are renovative in nature and do not come within the meaning of the word `develop` in the Special Provisions Act.

11 On 31 August 1995, pursuant to an application made by summons-in-chambers in this motion, the High Court ordered, inter alia, that the landlords produce to the tenant the plan and application for development and that there be a stay of the implementation of the order of the Board until the disposal of this

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motion. In compliance with that order the landlords exhibited the plan and application made to the Chief Planner.

12 When the motion came up before me the arguments centred on the following two main issues:

> (i) Do the works intended to be carried out under the plan of development approved by the URA come within the meaning of the word `develop` in the Special Provisions Act?
>
> (ii) Should the Board have granted an order for possession in the light of alleged bad faith on the part of the landlords? In this connection, the tenant relies on two factors:
>
> (a) the landlords put up a notice that the property was for sale as soon as the URA`s approval under the Special Provisions Act was obtained; and
>
> (b) no development was intended to be carried out for the adjacent two shophouses.

13 ***Develop***

14 First, it is necessary for me to set out what, under the approved plan of development, are the works that are intended to be carried out by the landlords:

> *Ground floor*
>
> (i) Existing rear door to be made good.
>
> (ii) Existing RC floor (rear) to be made good.
>
> (iii) Existing slab (front portion) to be retiled.
>
> (iv) Existing wall, door and window separating the front and rear portions to be made good.
>
> (v) Existing timber staircase to be made good.
>
> (vi) Existing front wall, door and windows to be demolished.
>
> (vii) A new roller shutter to be erected at the front.
>
> *Second floor*

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> (i) Existing front windows to be replaced.
>
> (ii) Air well at the rear to be completely covered by a new lightweight roof.
>
> (iii) Existing roof tiles to be made good.
>
> (iv) Existing fire wall (separating house No 117) to be made good.
>
> (v) Existing gutter to be made good.

15 The total estimated cost for undertaking the above works is $100,000.

16 The shophouse is a two-storey prewar building. In the words of the tenant`s consultant engineer, `the structural system of the building comprises of timber boardings on timber floor joist which is supported by brick-party side walls as well as brick piers and columns. The tiled roof is supported by timber roof trusses.` The facade of the building is good. He is of the opinion that the building is `generally in good condition`.

17 Section 12(1) of the Planning Act, defines `develop` to mean the carrying out of `any building, engineering, mining or other operations in or over or under land, or the making of any material change in the use of any building or land` but excluding, inter alia, `the carrying out of works for the maintenance, improvement or other alteration of the building which do not materially affect the external appearance or the floor area of the building.` By s 12(2) it is provided that `the demolition of, reconstruction of or addition to a building` constitutes `development`.

18 Section 2 of the Special Provisions Act provides that `develop` means to carry out:

> *(a) any building, engineering or other operations in, on or over land; or*

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> (b) any renovation or building works on any premises situated within a conservation area which would enhance or restore the character or appearance of those premises, in accordance with a plan for development. [Hereinafter referred to as limb (a) and limb (b) respectively.]

19 Under the Special Provisions Act, the landlord of a controlled premises who intends to recover possession of the premises under it is required to apply in writing to the Board with evidence, inter alia, that he has obtained written approval for a plan of development and has the means to carry out the same.

20 Counsel for the tenant contended that, bearing in mind the nature and the limited extent of the works to be carried out under the plan of development, they do not fall within limb (a). The works are not substantial and are in the nature of renovations. The fact that the total estimated cost is only $100,000 is evidence of that. There will be no `addition` other than the fact that the air-well at the rear will be completely covered up by a new roof to be made of lightweight material.

21 Counsel for the tenant further submitted that what are proposed to be done do not constitute `building` or `engineering` operation within the meaning of limb (a). And the expression `or other operation` in the same limb should not be construed to mean everything or anything but should be construed ***ejusdem generis*** with `building` or `engineering` operations.

22 It will be noted that the definition of `develop` in limb (a) is not identical to that in the Planning Act as it omits the reference to `mining` operation. In my view, this is understandable as `mining` has nothing to do with the Special Provisions Act which aim is to enable landlords to recover possession of premises for development. Any reference to `mining` would have been completely out of place in the context of the Act. As for the definition in limb

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(b), of course it is of no relevance as the shophouse does not fall within a conservation area.

23 The House of Lords` decision in ***Coleshill & District Investment Co v Minister of Housing & Local Government*** [1969] 1 WLR 746 is pertinent in relation to the question of the proper construction of limb (a) as the case involved consideration of provisions in the English Town and Country Planning Act 1962. In s 12(1) of the English Act, it was provided that `development` meant `the carrying out of building, engineering, mining or other operations, in on over or under land ... .` In s 12(2) it was provided that `(a) the carrying out of works for the maintenance improvement or other alteration of any building, being works which ... do not materially affect the external appearance of the building` would not be taken for the purposes of that Act to involve development of the land. It would be observed that these English provisions are in pari materia with the provisions in our Planning Act.

24 In ***Coleshill*** the owners decided to remove the embankments and walls of certain buildings (and did remove the embankments), which were used as ammunition depots during the Second World War. As the demolition of the embankments was carried out without planning permission, the local planning authority served an enforcement notice on the owners requiring them to restore the land to its former condition. The minister decided that the removal of the embankments was an engineering operation and the proposed removal of the walls, a building operation; it also constituted an alteration of the building materially affecting the external appearance of it. It was argued by the owners that `other operations` should be construed ***ejusdem generis*** with `building`, `engineering` or `mining`; the genus was the positive or constructional side of operations and as demolition was of a negative or destructive character, demolition could never come within the genus. The divisional court allowed the

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owners` appeal. It took the view that the removal of the embankments could not be described either as a building operation or an engineering operation. But the Court of Appeal and the House of Lords upheld the decision of the minister.

25 Lord Guest (at p 758) thought that it would be difficult to discover any common genus to `building, engineering or mining` so as to restrict the meaning of the words that follow, `or other operations`, as `mining operations` are not constructive because the surface of the land was destroyed in the course of the operations. So did Lord Wilberforce (at p 764). Lord Pearson expressed the position thus (at p 771):

> *I doubt whether in construing this subsection - seeking the intention to be found in it - it is safe to say that there must be a single genus comprising building operations, engineering operations and mining operations and the other operations must be fitted into that genus. Another possible construction which can be suggested is that there are three genera and the other operations must be similar to building operations or to engineering operations or to mining operations. However this may be, I think the sufficient answer in this case is that if there is a single genus it cannot be of the kind suggested, because it has to include mining operations, which so far as they affect the land are not positive and constructive but negative and destructive operations.*

26 I should add that Lord Morris also did not think there was only one genus. He reasoned as follows (at pp 755-756):

> *Had development meant `any` operations in, on, over or under land, there would not have been included in s 12(1) the words `building, engineering, mining or other.` I think that the word `other` must denote operations which could be spoken of in the context of or in association with or as being in the nature of or as having relation to building operations or engineering operations or mining operations.*

27 It is clear that what was held by the House of Lords in ***Coleshill*** is that one cannot discern from the three words `building, engineering, mining` that they would necessarily exclude work of a negative or destructive character. I do

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not think the decision in the case on this point goes any further than that. I would respectfully adopt the interpretation of Lord Morris that the words `other operations` could not mean `any operations`. I agree that `other operations` should be construed to mean operations which `could be spoken of in the context of or in association with or as being in the nature of or as having relation to building operations or engineering operations or mining operations.`

28 Reverting to limb (a), it seems to me clear that it was the intention of Parliament that the meaning of `develop` in that limb should broadly follow that in the Planning Act. As I have stated, the omission of the word `mining` in limb (a) is due to the fact that `mining` could have no application in the context of that Act. I, therefore, hold that `or other operations` in limb (a) should be interpreted to mean operations of the nature of or related to `building operations` or `engineering operations`.

29 However, having come to that construction does not conclude the matter. The question that remains is whether the works to be undertaken constitute works of the nature of or related to `building operations` or `engineering operations`. In this regard, counsel for the tenant seems to suggest that the nature of works encompass in limb (a) and limb (b) should be mutually exclusive; in other words, works in the nature of `renovation` should fall outside the ambit of limb (a). In my opinion, it is clear that limb (a) and limb (b) are distinct, in the sense that limb (b) applies to buildings which fall within a conservation area whereas limb (a) applies to buildings which are not so located. It does not, however, thereby follow that the nature of works covered under the two limbs could not overlap. I cannot see why just because limb (b) refers to `renovation` and limb (a) does not, it must mean that works which could be described in the nature of renovation are to be excluded from the ambit of limb (a). This argument overlooks the words `other operations` in limb (a). What

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really differentiates the nature of work under limb (b) from limb (a) is that the renovation work under limb (b) must enhance or restore the character or appearance of the building. A further point to show that the nature of works under the two limbs are not mutually exclusive can be seen from the words `building ... operations` in limb (a) and `building works` in limb (b).

30 In the present case, if the whole house were to be pulled down and reconstructed there could be no doubt that that would constitute building operations. But I cannot see why if part of a building is pulled down and rebuilt that is any less a building operation. I accept that ultimately it may be a question of degree. Here, considering that the complete front wall together with window and door are to be demolished and something new put in their place and the existing roof is to be removed and replaced by a new roof, plus all the other works, I do not think one could reasonably argue that all those works are not capable of being viewed as building operations or as works in the nature of or related to building operations.

31 Lastly, there is the argument that the estimated costs for the works are somewhat meagre. I do not see how this court sitting here in review could substitute its views for those of the authorized officer on an issue such as this. I do not think that the authority was wrong to have approved the plan of development for the purposes of the Special Provisions Act.

32 ***Bona fide intention to develop***

33 I now turn to the second main issue. The tenant has deposed that the landlords had from 10 April 1995 exhibited a notice outside the wall of house No 121 stating that it was for sale and it was so displayed up to 6 July 1995, the day on which the tenant affirmed the affidavit to oppose the application for

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possession. The tenant further stated that he contacted the telephone number shown on the notice and spoke to one Mr Tan who was an estate agent and who told the tenant that the advertisement for sale related to all the three shophouses. No evidence was advanced by the landlords to contradict the foregoing averments.

34 In addressing this point, the Board in its grounds of decision stated the following:

> *the Board considered the relevant provisions and came to the conclusion that there was nothing to prohibit the applicants from selling or attempting to sell premises after recovery of possession. Instead, the Act provided several checks to prevent abuse of the Act. Whilst it is true the applicant could sell, such a sale could only take place with the consent of the Board.*

35 What is the object of the Special Provisions Act? In the long title of the Act it is stated that it 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.` Section 4(1) states that a landlord of a controlled premises may apply in writing to the Board for the recovery of a controlled premises if the premises are situated in a designated development area and the landlord `intends to effect or cause to be effected development under this Act, in relation to the controlled premises or any part thereof.`

36 At the second reading of the Bill, which eventually became the Special Provisions Act, the Minister stated on 22 May 1968:

> *... the Bill now before this House is designed to encourage and promote development in the private sector by enabling landlords of premises, which are at present protected and controlled by the Control of Rent Ordinance, to recover possession of these controlled premises for development purposes on payment of a reasonable compensation to the tenants.*

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37 ... The Board, before granting the application, is required to satisfy itself that the landlord has a genuine intention as well as the financial means to develop the area, that this plan for development has been approved by a public officer appointed by the minister for the purpose, ...` [Emphasis added.]

38 Section 4(10) of the Act provides that the premises vacated shall not be used by the landlord for any purpose other than effecting development in accordance with the approved plan and that `until such development is commenced the premises shall not be sold, leased, or otherwise disposed of, without the consent in writing of the Board`. Section 5(1) empowers the President of Singapore, upon the request of the minister, pursuant to an application of the Board to direct the acquisition of the premises if the landlord fails to commence development or complete development within the various periods stated in the section.

39 In the light of the foregoing, it is clear that a landlord should only be allowed to recover possession under the Act if he has the real intention to develop the premises. Once a landlord obtains possession under the Act and until development commences, he is no longer at liberty to dispose of the premises. He is not allowed to do so during that period, except with the permission of the Board and in my opinion such permission should not be given unless there are valid reasons. After all, under s 4(2)(a) the landlord would have produced evidence to the Board to show that funds are or will be available for the purpose of carrying out the development. Good reasons must therefore be given to show why it is necessary to effect a sale before development commences. Thus, I do not entirely agree with the Board when it stated `there was nothing to prohibit the applicants from selling or attempting to sell the premises after recovery of possession,` though the Board went on to consider the restriction on the owner`s right to sell. In my view the object behind such a

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restriction is clear, namely, to ensure that the development is duly carried out and completed [s 5(1)].

40 I appreciate that even if a landlord expresses an intention to sell after obtaining possession but before development commences, he cannot effectively do that without the permission of the Board. I also appreciate that very often developments are carried out with a view to sale. The typical example would be the clearing of a row of old shophouses (including the tenants) and the development of the land into a multistorey strata title complex. Sale of the units in the development are clearly contemplated. But because of s 4(10), the developer will not be able, unless approved by the Board, to sell those units before development commences.

41 Here, there is clear evidence, which is not contradicted, that without the consent of the Board, the landlords have already advertised to sell the property. In my view, this does raise a question mark as to the bona fides of the landlords to develop the shophouse. That must be a factor which the Board should give due consideration in determining whether it should grant an order for possession in favour of the landlords. In my judgment the Board was in error in not giving any consideration to that. I do not think it is right to say that just because there are ss 4(10) and 5(1), the question mark does not matter. Compliance with s 4(2) of the Act does not necessarily mean that the application for possession must be granted. In my opinion, the Act should not be allowed to be invoked by a landlord whose real aim is not to develop the property but to evict the tenant and sell at a profit even before development commences.

42 In this regard, one other factor pointed out by the tenant is pertinent. The three shophouses are joined together, with the subject shophouse sandwiched in the middle. Photographs were tendered to the Board to show the same. I have

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had sight of those photographs. The approved plan of development relates only to the subject shophouse. No evidence was tendered to show that the two adjacent shophouses are similarly to be developed. It may well be that the two adjacent shophouses are vacant and the owners need not have to invoke the Special Provisions Act to recover possession. But looking at the factual position of the three shophouses, it does not make much sense in just developing the middle shophouse and not the other two. It must here be borne in mind that the three shophouses falls within two lots and the subject shophouse occupies a part of the two lots. I feel that this is something which the Board should, in the circumstances of the case, take into consideration before it arrives at a decision. I accept there may well be a simple explanation to all that.

43 Under s 18 of the Special Provisions Act, the High Court is empowered on hearing such a matter to `give such order thereon, either by directing a fresh hearing or otherwise, as seems necessary to secure that substantial justice is done.` In the result I would set aside the order of possession granted by the Board on 14 July 1995 and direct that a fresh hearing be carried out by the Board which should consider the matters aforesaid.

44 The tenant shall have the costs of this motion, excluding the getting-up on the issue of `develop`.

45 ***Tenant`s application allowed.***

Chao Hick Tin J

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Karuppan Chettiar and Husain (Karuppan Chettiar & Husain) for the applicant
Lim Joo Toon and Bonnie Kwok (Cheong Hoh & Associates) for respondents

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