City Developments Ltd v Chief Assessor
[2008] SGCA 29

Case Number : CA 96/2007

Decision Date : 10 July 2008

Tribunal/Court : Court of Appeal

Coram : Andrew Phang Boon Leong JA; V K Rajah JA; Tan Lee Meng J

Counsel Name(s) : Tan Kay Kheng and Tan Shao Tong (WongPartnership LLP) for the appellant; Liu Hern Kuan and Quek Hui Ling (Inland Revenue Authority of Singapore) for the respondent

Parties : City Developments Ltd — Chief Assessor

Administrative Law – Administrative discretion – Inland Revenue Authority of Singapore – Assessing annual value of redevelopment property – Whether irrational to have regard to wider planning considerations – Whether irrational to distinguish between property developers and homeowners

Revenue Law – Property tax – Annual value – Whether hypothetical tenancy method or 5% method of assessment should be used – Section 2 Property Tax Act (Cap 254, 1997 Rev Ed)

10 July 2008

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Background

1 This is an appeal by City Developments Limited ("CDL") against the decision of the judge below ("the Judge") in Originating Summons No 1975 of 2006 (see *City Developments Ltd v Chief Assessor* [2008] 2 SLR 397 ("the GD")), in which he dismissed CDL's appeal against the decision of the Valuation Review Board ("VRB"). The VRB had earlier upheld the Chief Assessor's dismissal of CDL's objection to his assessment of the annual value of a property that CDL owns (see *City Development Limited v The Chief Assessor* [2007] SGVRB 1 ("the VRB decision")). We dismissed the appeal with costs, and now provide the full reasons for our decision.

2 CDL, an established property developer, had acquired a piece of land at Nos 5A to 5H and 5J to 5M Balmoral Park and 12 apartments thereon ("the subject property") by way of an *en bloc* sale in February 2000. It then applied to the Urban Redevelopment Authority ("URA") for written permission, which was granted in March 2001, to redevelop the subject property into a condominium. Not long after, CDL paid a development charge of $6.74m, which is a tax on the enhancement in land value resulting from the State approving a higher value development. In August 2003, it acquired the land adjacent to the subject property (40 Stevens Road) with a view to embarking on a larger condominium project than before; to that end, it applied again to the URA for permission to redevelop the subject property (in conjunction with 40 Stevens Road) as the previous permission had lapsed. Between 2002 and 2005, however, the subject property was not demolished but most of it was rented out to a variety of entities at significantly discounted rates (see the GD at [6]–[7] and [29]). Most of these entities were not related to CDL.

3 The amount of property tax payable on a property depends on the latter's annual value, and s 2 of the Property Tax Act (Cap 254, 1997 Rev Ed) ("the Act") defines the ways in which "annual value" can be assessed. For the present case, there were two possible definitions applicable, *viz*;

(a) s 2(1) of the Act, *ie*, the gross amount at which the property can reasonably be expected to be let from year to year ("the hypothetical tenancy method"); or

(b) s 2(3)(*b*) of the Act, *ie*, 5% of the estimated market value of the land as if it were vacant land ("the 5% method").

Both provisions are reproduced as follows:

2.—(1) In this Act, unless the context otherwise requires —

"annual value" —

(*a*) in relation to 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 (other than goods and services tax); …

…

(3) 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 defined in this Act or the sum which is equivalent to the annual interest at 5% —

(*a*) on the estimated value of the property, including buildings, if any, thereon; or

(*b*) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon.

In most situations, the hypothetical tenancy method would yield a lower annual value of the property (and therefore a lower property tax payable), but there is no doubt that s 2(3) of the Act expressly confers on the Chief Assessor the discretion to use that particular provision (embodying the 5% method) over other methods of assessment found in s 2. As a matter of practice, the Chief Assessor also distinguishes between developers and homeowners rebuilding their homes in that s 2(3) is applied to homeowners only at the point of demolition of the existing structures.

4 Before 1 January 2002, the annual value of the subject property was assessed using the hypothetical tenancy method for each of the 12 apartments comprising the subject property. In November 2002, the Chief Assessor informed CDL that, with effect from 1 January 2002, the annual value of the subject property would be assessed using the 5% method instead. This translated to $160,400 of property tax payable per year, as opposed to some $38,000 if the hypothetical tenancy method was used. In other words, this was a figure which was more than four times the previous amount assessed.

The decision below and the issues before us

5 At the hearing before the VRB, the Chief Assessor defended his use of the 5% method in the light of a policy to encourage the development of land instead of the hoarding of it until the appropriate time to launch a redevelopment project. In the pre-hearing submissions to the VRB, it was submitted on behalf of the Chief Assessor that:[note: 1]

The rationale for the Chief Assessor's practice can be explained on two grounds. The first is a

policy reason: that the higher rate will encourage redevelopment and rapid redevelopment of older properties is beneficial to Singapore. The Chief Assessor recognizes that the assessment of lands under section 2(3) even though there is no income derived from the land has a *punitive effect*. It discourages the hoarding of land by developers for speculative purposes. The exercise of the option under section 2(3) for redevelopment sites is aligned with the same policy intent to discourage land hoarding. [emphasis added]

CDL thus argued before the Judge that the Chief Assessor had: (a) acted unfairly in exercising his discretion under s 2(3)(*b*) of the Act; and (b) acted *ultra vires* in having regard to wider planning considerations when determining the annual value of the subject property.

6 The Judge dismissed those arguments, and held that:

(a) the Chief Assessor had the sole discretion under s 2(3) of the Act to determine which method of assessment ought to apply, and this discretion was fettered only by the duty to act fairly;

(b) the Chief Assessor was justified, on the facts of the case, in using the 5% method as there was a clear and definite intention on the part of CDL to redevelop the subject property;

(c) the distinction drawn between property developers and homeowners rebuilding their homes was a valid one; and

(d) the Chief Assessor's policy to discourage land hoarding did not impinge on the powers and duties of other public authorities and was a legitimate and logical assessment of what was in the public interest.

7 We agreed with the decision of the Judge. Indeed, although a number of arguments were raised on appeal before this court, they not only had no merit but were also (and more importantly) the same – or comprised variations of the same – arguments explored both before the VRB as well as before the Judge. However, we also wish to take this opportunity to elaborate on two important (and related) points, in particular, as follows:

(a) whether the adoption of the policy of discouraging property developers from land hoarding in land-scarce Singapore was an irrational one (since illegality was not an issue here); and

(b) whether the distinction drawn between homeowners and property developers was an irrational one.

8 In so far as the two points highlighted in the preceding paragraph are concerned, counsel for CDL made the following arguments before us:

(a) by basing his decision to invoke s 2(3) on a planning consideration, the Chief Assessor had acted *ultra vires* as he was not only factoring in irrelevant considerations but was also neither empowered nor equipped to deal with such considerations, which fell within the ambit of other relevant government agencies; and

(b) the distinction drawn between homeowners and property developers was not endorsed anywhere in the Act, and, preliminarily speaking, there was no working definition of "developer".

We now turn to address the first issue.

Whether the adoption of the policy of discouraging land hoarding was irrational

9 This being, in essence, a case of administrative law, there were effectively only two ways in which CDL could challenge the Chief Assessor's exercise of discretion under s 2(3) of the Act, *viz*, that the Chief Assessor had either acted illegally, or he had acted irrationally, in adopting the policy of discouraging land hoarding. Either way, both hurdles would have been difficult to overcome even though CDL did not mount the argument of illegality. As was observed in *Halsbury's Laws of Singapore: Administrative and Constitutional Law*, vol 1 (Butterworths Asia, 1999) at para 10.029 ("*Halsbury's* vol 1"):

> Any person or body of persons having legal authority to make decisions affecting the rights of persons is subject to the supervisory jurisdiction of the High Court. However the court's power to intervene is limited to a review of the decision-making process and not with the merits of the decision itself, or with the findings of fact, as a general rule. Thus, the courts will intervene if the decision-making body has exceeded its authority, as by imposing unreasonable restrictions or conditions. A body invested with discretionary power to carry out its statutory functions and duties is entitled to adopt a general policy in the exercise of its statutory powers and duties provided that the policy is not unreasonable in the *Wednesbury* [*Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223] sense.

10 The Singapore High Court decision of *Lines International Holding (S) Pte Ltd v Singapore Tourist Promotion Board* [1997] 2 SLR 584 ("*Lines International*") is representative of the same points and is a useful case in specific relation to policy-based acts of discretion. In that case, the plaintiffs were cruise operators who sought judicial review of certain conditions imposed jointly by the Singapore Tourist Promotion Board ("STPB") and the Port of Singapore Authority ("PSA") which resulted in the plaintiffs having to reduce the number of cruise-to-nowhere cruises operated. These conditions emanated from concerns that such cruises were predominantly gambling cruises and, accordingly, the number of such cruises should be reduced. One of the plaintiffs' arguments was that the STPB and the PSA had exceeded their statutory powers in imposing the conditions. Having examined both the English and local case law, Judith Prakash J dismissed the claim in the following terms (at [78]):

> The cases show that the adoption of a general policy by a body exercising an administrative discretion is perfectly valid provided that:
>
> (i) the policy is not unreasonable in the special sense given to the term in *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] 1 KB 176, ie it is not a decision that is so outrageous in its defiance of logic or accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it or that no reasonable person could have come to such a view: see also *Council* [*of Civil Service Unions*] *v Minister for the Civil Service* [[1985] AC 374]
>
> (ii) in considering unreasonableness in the *Wednesbury* sense, the courts are not entitled to substitute their views of how the discretion should be exercised with that actually taken: see Chan Hiang Leng Colin v PP [1994] 3 SLR 662 nor is unreasonableness established if the courts merely come to the view that such a policy or guideline may not work effectively as another since the courts are not exercising an appellate function in respect of administrative decisions … and the burden of proving that the policy or guideline is illegal or ultra vires is on the plaintiffs …

(iii) they are made known to the persons so affected; and

(iv) neither PSA nor STPB fetters its discretion in the future and is prepared to hear out individual cases or is prepared to deal with exceptional cases: see *Findlay*'s case [*Re Findlay* [1985] AC 318] and also *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610.

We should add that the passage by Prakash J quoted above was cited with approval by Yong Pung How CJ in *JD Ltd v Comptroller of Income Tax* [2006] 1 SLR 484 at [50] and by Chan Sek Keong CJ in *Registrar of Vehicles v Komoco Motors Pte Ltd* [2008] 3 SLR 340 ("*Komoco Motors*"), especially at [30]–[31]. The following passage from *Lines International* is also apposite for our purposes (at [80]):

> PSA's duty under s 9(c) of the PSA Act is to promote the use, improvement and development of the port. I have said that this duty has to be construed widely and that PSA would not be doing its duty if the sole aim of its policies was to increase the amount of tonnage which uses the port and the amount of revenue that it could collect from the port's services and facilities. PSA is entitled when considering the promotion of the port to have regard to wider considerations such as the promotion of desirable businesses and the restriction of undesirable businesses. In deciding what businesses are desirable and what are not, PSA is entitled to take into account the views of other government bodies like the police.

11 For all intents and purposes, it would have been impossible to argue that the policy (of discouraging land hoarding in Singapore) *per se* is either irrational or unknown to property developers, despite what CDL contends. Such a policy is premised on a very commonsensical notion (and which is in the public interest) of discouraging as well as preventing land hoarding in land-scarce Singapore.

12 Indeed, the unique context pertaining to the scarcity of land in Singapore has, in fact, been recognised judicially by the local courts in a diverse variety of areas of Singapore law.

13 In the decision of this court in *RSP Architects Planners & Engineers v MCST Plan No 1075* [1999] 2 SLR 449, for example, which considered the tortious duty of care in relation to liability for pure economic loss, L P Thean JA, delivering the grounds of decision of the court, observed thus (at [43]):

> The House of Lords in *Murphy* [*v Brentwood District Council* [1991] 1 AC 398] appeared to consider that there were no special factors distinguishing negligence in the construction of a building from negligence in the manufacture of a consumer good. In so doing, their Lordships accepted the analogies painted by Lord Brandon in *Junior Books* [*Ltd v Veitchi Co Ltd* [1983] 1 AC 520] between building construction and product manufacture. As Mason CJ, Deane and Gaudron JJ held in *Bryan v Maloney* [(1995) 128 ALR 163], however, there are, in our opinion, two distinguishing factors. Firstly, the investment in real property is likely to represent a significant, if not the most significant, investment in an individual's lifetime (as opposed to the purchase of a mere chattel). The scale of the investment in money terms is far greater than what is involved in the acquisition of a chattel. Secondly, the permanence of the structure may give rise to a greater expectation than a chattel. *We think those arguments apply a fortiori in Singapore, where land is not only scarce but expensive. We think that to treat houses and consumer goods alike would be to ignore simple realities, realities which, to our mind, are instrumental in dictating the expectations and degree of reliance placed upon the persons developing, building or designing the structure which stands upon it.* [emphasis added]

14 In another decision of this court, in *Xpress Print Pte Ltd v Monocrafts Pte Ltd* [2000] 3 SLR 545, which concerned the right of support to land in the Singapore context, Yong Pung

How CJ, who delivered the judgment of the court, observed thus (at [48]):

> We believe that the true legal justification for the right of support is the legal principle encapsulated in the Latin maxim *sic utere tuo ut alienum non lœdas*, which translates in English to: use your own property in such a manner as not to injure that of another. ***The importance of that principle is compounded in Singapore in view of our land use pattern, whereby all land available for commercial, industrial or residential purposes is used to a high intensity.*** The damage that might be caused if landowners were lackadaisical in their excavation works could be astronomical, not to mention the cost in human lives or injury to property. [emphasis added in bold italics]

15 Finally, in the Singapore High Court decision of *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2006] 3 SLR 507 (affirmed by the Court of Appeal in *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR 568 (and see *id* at [26])), it was observed (in the context of land acquisition) as follows (at [36]):

> However, does that mean that s 5(3) of the Act [the Land Acquisition Act (Cap 152, 1985 Rev Ed)] cannot be questioned in any court? This is not an implausible proposition, having regard to the nature and policy of the Act itself. However, *bad faith*, particularly in the *governmental* context, does not sit easily in any (and, especially, the modern-day) context. In my view, and viewing the matter from the particular perspective of land acquisition in the Singapore context, it is imperative that a *balance* be found in the tension between ensuring that the purposes of the Act and the ensuing public benefit are achieved on the one hand and ensuring that there is no abuse of power on the other. ***In this regard, it is important to note that the Act was promulgated not only for the public benefit but also because land is an extremely scarce and therefore valuable resource in the Singapore context.*** These are in fact inextricably related reasons. This being the case, it is clear why much more latitude and flexibility is given to governmental authorities. As a corollary, it is not the task of the courts to sit as makers of policy. This would in fact be the very antithesis of what the courts ought to do. But latitude and flexibility stops where abuse of power begins. Such abuse of power is most commonly equated with the concept of *bad faith*. At this point, the courts must – and will – step in. But, in the nature of both the concept itself, such abuse of power will not be assumed (let alone be found) at the slightest drop of a hat. It is a serious allegation. There must be proof. In proceedings such as these, there must be sufficient evidence, produced in its appropriate context, that establishes that a "prima facie case of reasonable suspicion" of bad faith exists. [emphasis added in bold italics]

16 Likewise, the Chief Assessor's practice of applying s 2(3) of the Act to redevelopment properties has been noted by local commentators for at least over the past ten years: see *eg, Halsbury's Laws of Singapore: Revenue and Taxation*, vol 16 (LexisNexis, 2004) at para 200.584, Leung Yew Kwong & Mani Usilappan, *Property Tax in Singapore and Malaysia* (Butterworths Asia, 2nd Ed, 1997) at pp 44–49.

17 In the premises, the policy of discouraging land hoarding could not be said to be an irrelevant consideration for the Chief Assessor, and adopting such a policy was not irrational. Ultimately, what the Chief Assessor did was merely, in the exercise of his discretion, factor in a policy that happens to be a policy that is considered predominantly (albeit, as we shall explain in a moment, not exclusively) by the Chief Planner. That was not an *ultra vires* act, and planning considerations are certainly not exclusively within the URA's domain, even though such considerations would probably feature most prominently for that particular government body. Further, it has been observed in *Halsbury's* vol 1 ([9] *supra* at para 10.040):

> Where a wide range of considerations needs to be taken into account or a power is conferred on an authority exercisable on the authority's 'satisfaction', the courts are reluctant to intervene in the absence of bad faith or capriciousness.
>
> What is or is not a relevant consideration will depend on the statutory context. … Fairness to persons affected by administrative action or personal hardship caused thereby, will also be relevant considerations to be taken into account. Often, the decision-maker will be required to have regard to the general public interest.

We refer, too, to the views in Sir William Wade & Christoper Forsyth, *Administrative Law* (Oxford University Press, 9th Ed, 2004) at p 381:

> Under many statutes the discretion conferred is extensive, and it is no concern of the court to restrict it artificially by limiting the considerations that are relevant. … Where there is overlap between different areas of policy, for example housing and planning, the court may decline to make a rigid dichotomy between them so as to confine a housing authority to 'housing' considerations only.

Thus, the Chief Assessor's adoption of the policy of discouraging land hoarding, occasioned by a regard to a legitimate public interest and a wide range of considerations, meant that this court would be slow to interfere with his decision. The URA and the Inland Revenue Authority of Singapore are simply two bodies that oversee different aspects in the management of what is fundamentally a commodity common to both bodies' purview, *viz*, land. It is only to be expected that government agencies do not operate in isolation and would adopt a common view towards policies. It is neither irrational nor unreasonable for government agencies to adopt *an integrated and holistic approach* towards the formulation as well as the implementation of government policies.

18 In that connection, it might be useful to refer to the recent decision of this court in *Komoco Motors* ([10] *supra*). That case involved a car importer ("Komoco") seeking judicial review of the decision of the Registrar of Vehicles ("the Registrar") on the amount of additional registration fees ("ARF") to be levied on over 17,000 vehicles imported by Komoco. Since 1968, the assessment of the ARF had been based on the open market value ("OMV") of the vehicle in question – and the OMV of a vehicle has always been determined by the Singapore Customs ("Customs"), a separate body responsible for imposing, *inter alia*, excise duties. Since r 7(3) of the Road Traffic (Motor Vehicles, Registration and Licensing) Rules (Cap 276, R 5, 2004 Rev Ed) states that "the value of a motor vehicle shall be determined by the Registrar after making such enquiries, if any, as he thinks fit", the Registrar was, in theory, entitled to calculate the ARF payable based on the OMV as determined by Customs. In fact, this was an arrangement that had been accepted by the industry for the last 40 years without protest *vis-à-vis* its propriety, legality or reasonableness. Komoco alleged, however, that in this instance, the Registrar had vested absolute trust in Customs by accepting the latter's valuation of the vehicles' OMV and, as a result, had fettered his discretion under r 7(3) as well as abrogated that discretion to Customs. Chan Sek Keong CJ, delivering the judgment of the court, noted that Customs had better resources (than the Registrar) in determining the OMVs of motor vehicles and observed (at [70]):

> [I]n the eyes of the law, the Government is an indivisible legal entity when discharging its executive functions and powers (see, for example, *Town Investments Ltd v Department of the Environment* [1978] AC 359 at 399–400 and *Smith v Lord Advocate* 1980 SC 227 at 231). Although, with regard to the collection of fees and taxes payable on motor vehicles, Parliament has empowered Customs to collect, *inter alia*, excise duties and the LTA to collect the ARF, both agencies are part of the Government, albeit under the charge of different Ministers.

There is therefore nothing unusual or indeed irrational about the Chief Assessor adopting a policy that is (arguably) predominantly under the consideration of the Chief Planner.

19 Of course, it was rather unfortunate that certain portions of the Chief Assessor's submissions to the VRB were, to say the least, drafted inelegantly, and might have led to a possible misunderstanding. Specifically, it will be recalled that the Chief Assessor had conceded that the use of s 2(3) of the Act had a "punitive effect" on property developers (see [5] above). CDL was (quite understandably) of the view that the Chief Assessor was not vested with the power to punish property developers, but that was not, in our view, the effective *substance* of what was intended by the Chief Assessor. In the premises, those words did not, in and of themselves, detract from the fact that the Chief Assessor had not acted irrationally when he adopted the policy of discouraging land hoarding.

Whether the distinction drawn between property developers and homeowners was irrational

20 One of the other legs on which the appellant's argument, that the Chief Assessor was acting irrationally, stood was that he (*viz*, the Chief Assessor) had drawn an irrational distinction between property developers and homeowners. To recapitulate, the distinction is that s 2(3) of the Act is only applied to homeowners at the point of the demolition of their houses. CDL attempted to argue, as a preliminary point, that there were "definitional issues" as to who could be considered a "property developer", but we were of the view that it was very obvious that CDL was a property developer. It is of course entirely possible that there can be entities that blur the line between the two said classes, but that was not the case here. In situations where there might be a possible blurring of the line, then the pertinent question for the court would be which use of the land constitutes the *predominant* use. As we have just mentioned, in so far as the present appeal is concerned, it was clear beyond peradventure that the predominant use was for *redevelopment*. Indeed, we would even go so far as to state that redevelopment was virtually the sole use in which the appellant was interested. The relevant facts bear this out. The rental which was received by the appellant was clearly below the prevailing market rate (see the GD at [12] and [29]). And, as the Judge pertinently observed (see the GD at [27]):

> All the factors considered by the Chief Assessor evinced a clear and definite intention on the part of the appellant to redevelop the subject property. It made commercial sense to the appellant to have some rental income while it contemplated the final redevelopment plans for the subject property. The swift application for approval to redevelop and the prompt payment of the hefty development charge showed that the subject property was most definitely a redevelopment site acquired by the appellant for its very substantial property development business. Otherwise, why was there the concern about "locking in" the development charge for fear that it would be increased over the years ahead?

We also note that CDL had acquired an adjoining property which was subsequently amalgamated together with the property for redevelopment as one composite whole (see the GD at [13] and [28]).

21 In any event, the Chief Assessor explained the differentiation between property developers and homeowners in these terms:[note: 2]

> The position of a homeowner is in the usual case very different from that of a property developer. A homeowner redevelops a home to stay, as a roof over his head, and is not profit-driven in the development of his home. … [A] homeowner is likely to occupy the house and vacate it only near the point of demolition. Most homeowners are likely to want to move into the property as soon as redevelopment is completed, because the property is their home. A developer on the other hand

> is not faced with these considerations, and may hold the undeveloped property (as in this case) for several years before developing it. This … is the most important distinction between homeowner and developer.
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> …
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> Another important distinction is that a developer's purpose for development is to make profits … Property under development is the developer's trading or business stock from which the profits are generated – this is not the case of a homeowner developing a property as his home. Further, for developers developing to sell, the property tax payable is part of the cost of development and developers would seek to pass this cost onto purchasers of the developed property; this is not the case for homeowners who ultimately bear the tax and are unable to pass it on.

22 It is hard to fault the logic of the explanation as set out in the preceding paragraph (see also the GD at [33]). It is wholly consistent with the general policy of discouraging as well as preventing land hoarding in land-scarce Singapore (which we have dealt with in detail above at [11]–[17]) for the focus in this particular regard to be on property developers rather than homeowners who do not, *ex hypothesi*, hoard land in the first place. There is, in the circumstances, nothing irrational (still less, illegal) in the adoption of such a policy. Indeed, the argument by CDL to the effect that it had been made a "sacrificial victim" by the policy of the Chief Assessor in using the 5% method was disingenuous in the extreme. In point of fact, CDL was not only alive to its commercial interests but also ensured that such interests were secured throughout (see also the observations by the Judge at [27] of the GD quoted above at [20]).

Addressing the case law

23 While we have established that the Chief Assessor had not acted irrationally, given that CDL had referred to a number of cases to support its appeal before this court, we would make some brief observations as to why those cases did not advance CDL's arguments. The first case is that of the Singapore High Court in *Lee Tat Development (Pte) Ltd v Chief Assessor* [1995] 3 SLR 855 ("*Lee Tat*"). In that case, the property in question was a large piece of land on which two adjacent houses sat. The houses were in various stages of disuse and disrepair, and there was no evidence that the property would be rented out. Provisional permission to develop the land was subsequently granted. The Chief Assessor used the then equivalent of s 2(3) of the Act to assess the property's annual value, and this was upheld in both the VRB and the High Court. Before us, CDL focused much of its energies in attempting to argue, *inter alia*, that *Lee Tat* had propounded a stage-by-stage test (as opposed to a holistic test), *viz*, in deciding whether to use s 2(3) of the Act, one had to *first* consider whether the property was lettable before other factors could be considered.

24 In our view, the above argument was not borne out from a close analysis of the judgment in *Lee Tat* itself: see 861–862, [23]–[27] of *Lee Tat* as well as the GD at [25]–[26]. In fact, citing *Lee Tat* was actually detrimental to CDL's case. The annual value of the property in *Lee Tat* was assessed using the then equivalent of s 2(3) of the Act (and the property was therefore subject to higher property tax) *even though* the property was not rented out; here, in contrast, CDL had derived *extra* income from the rental proceeds. Hence, contrary to what CDL argues, the nexus between having a property that is rented out and using s 2(3) of the Act is far from clear. The only thing that is clear is that the Chief Assessor, in exercising his sole discretion, has to act fairly, taking into account all the relevant circumstances of the case (*per* Chao Hick Tin J in *Lee Tat* at 861, [25]). In any event, it was clear that the predominant (if not the sole) purpose of CDL with regard to the subject property was *redevelopment* (as opposed to rental): see generally above at [20].

25 CDL also relied on a previous VRB decision, *Oxley Lights Pte Ltd v Chief of Assessor* Valuation Review Board Appeal No 41 of 2004 ("*Oxley Lights*"). As the Judge had already dealt with the facts of that case extensively (GD at [36]–[47]), we will not repeat the endeavour here. Suffice it to state, however, that *Oxley Lights* was of limited assistance to us. For one, it was a decision without written grounds, so we could not be apprised of the exact reasoning of the tribunal. The importance of this last-mentioned point is, in fact, accentuated in view of CDL's claim that this was a very pivotal case for them. All we know was that the VRB there allowed the appeal on the basis that *Lee Tat* could be distinguished. Another point is this: The permission to redevelop the property in that case had already lapsed but extension was *not sought*, signifying a lesser intention to redevelop the property. To that extent, *Oxley Lights* is distinguishable; here, CDL had, as we have seen, always intended to redevelop the property, but had merely bided its time. Furthermore, the Judge had stated that he did "not necessarily endorse the finding of fact" in *Oxley Lights* and "might well have taken a different view of the matter if it had come up before [him]" (see the GD at [47]). To sum up, *Oxley Lights* could not, with respect, be accorded any serious weight, if at all.

2 6 *Poh Hee Construction Pte Ltd v Chief Assessor* (1992) 1 MSTC 5,100 ("*Poh Hee*") is the final case that needs to be addressed. There, a large piece of land with an old detached house thereon was assessed using the 5% method. The house was vacant and there was no evidence of any intention to rent it out, and hence the VRB held that the Chief Assessor had exercised his discretion properly. However, the VRB also added (at 5,103):

> We are of the view that since the power in proviso (b) [s 2(*b*) of the Property Tax Act (Cap 254, 1985 Rev Ed) which is now s 2(3) of the Act] to the definition [of "annual value"] has been given by Parliament to the Chief Assessor, we ought not to fetter the exercise of that power by the Chief Assessor. …
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> …
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> … If the property is let at a fair market rental and the Chief Assessor insists on using the secondary definition, then we might perhaps have arrived at a different conclusion.

It is pertinent to observe (as the VRB, in fact, did (see the VRB decision ([1] *supra*) at [18])) that the subject property was not, in any event, let at a fair market rental. And, much as CDL asserts it to be an "overriding principle", it has failed to demonstrate why the fact that the annual value of a property *can be* determined by actual rent requires the Chief Assessor to fetter his discretion conveyed by s 2(3) of the Act. Indeed, to do so would run counter to the decision in *Lee Tat* itself. In that case, Chao J observed thus (at 861, [24]):

> 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.

The above observations apply equally (in principle and logic) to a situation such as the present (although an actual, as opposed to a hypothetical, rent is involved). Further, we are left in the dark as to *the precise circumstances* under which the tribunal might have arrived at a different conclusion. Most importantly, perhaps, the at least implicit premise contained in the above-quoted observations of the VRB in *Poh Hee* is that the predominant (or sole) purpose with regard to the property in question relates to renting (and not redevelopment). This was, as we have already observed, *not* the situation on the facts of the present appeal.

Conclusion

27 For both the reasons given by the Judge as well as the foregoing reasons, we dismissed the appeal with costs, and with the usual consequential orders.

[note: 1] Record of Appeal, Vol III Part A, at p 254.

[note: 2] Respondent's Case, at paras 49 and 52.