Eng Foong Ho and Others v Attorney-General
[2009] SGCA 1

Case Number : CA 26/2008

Decision Date : 05 January 2009

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Ang Cheng Hock and Tay Yong Seng (Allen & Gledhill LLP) for the appellants; Eric Chin and Janice Wong (Attorney-General's Chambers) for the respondent

Parties : Eng Foong Ho; Hue Guan Koon; Ang Beng Woon — Attorney-General

Civil Procedure – Application for declaration – Locus standi – Whether appellants had locus standi to initiate proceedings – Whether higher standard of locus standi required for application under O 15 r 16 than under O 53 r 1 Rules of Court (Cap 322, R 5, 2006 Rev Ed) – Delay – Whether there was inordinate delay on part of appellants – Whether delay in asserting one's constitutional rights a relevant factor – Order 15 r 16 and O 53 r 1 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Constitutional Law – Equal protection of the law – Whether acquisition of temple property and not nearby mission or church in violation of Art 12 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) – Fundamental liberties – Freedom of religion – Whether appeal involved alleged violation of Art 15(1) Constitution of the Republic of Singapore – Arts 12 and 15(1) Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint)

Land – Registration of title – Whether particulars of temple property in land-register erroneous and constituting questionable entry – Section 5(3) Land Acquisition Act (Cap 152, 1985 Rev Ed) – Whether acquisition could be challenged for bad faith notwithstanding s 5(3)

5 January 2009 Judgment reserved.

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

Introduction

1 The appellants, who are devotees of the Jin Long Si Temple ("the Temple") located at 61 Lorong A-Leng, Singapore 536751 ("the temple property"), sought a declaration in the court below that the acquisition of the temple property by the Collector of Land Revenue ("the Collector") violated Art 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"). Article 12(1) states that "[a]ll persons are equal before the law and entitled to the equal protection of the law". The trial judge ("the Judge") dismissed the appellants' application (see *Eng Foong Ho v AG* [2008] 3 SLR 437 ("the GD")). This decision is now the subject of the present appeal.

2 The issues before this court in the present appeal correspond to the grounds on which the Judge had dismissed the application in the court below, and are as follows:

(a) whether the appellants had *locus standi* to institute the present proceedings;

(b) whether there had been inordinate delay on the part of the appellants in instituting the present proceedings; and

(c) whether the acquisition of the temple property was in violation of Art 12 of the Constitution.

3 The Judge held that the appellants had no *locus standi* to institute the present proceedings and that they had also been guilty of inordinate delay in instituting those proceedings. He also held that the acquisition of the temple property was not, in any event, in violation of Art 12 of the Constitution.

4 We turn now to consider each of these issues *seriatim*. Before proceeding to do so, we first set out, briefly, the background to the present appeal.

Background

5 The background to the present proceedings is very straightforward and is set out neatly by the Judge in his decision. Briefly, the temple property is subject to a trust for religious purposes. The trustees of the temple property ("the Trustees") are not parties to the present proceedings.

6 The temple property is located near the site of the new Bartley Mass Rapid Transit ("MRT") station. It is also adjacent to the Ramakrishna Mission ("the Mission") as well as to the site of the former Outram Institute. Bartley Christian Church ("the Church") stands next to the Mission.

7 The temple property was compulsorily acquired pursuant to the Land Acquisition Act (Cap 152, 1985 Rev Ed). The *Gazette* notification in relation to the acquisition (GN No 172/2003, published on 20 January 2003) declared that the temple property (as well as another nearby property) was acquired for the "[c]onstruction of Circle Line Stage 3 & [c]omprehensive [r]edevelopment".

8 The Trustees, who noted that the land occupied by the Mission and the Church had not been acquired by the Collector, appealed to the authorities against the acquisition of the temple property. Much correspondence also ensued between the Trustees and the various governmental agencies. However, the Trustees were ultimately unsuccessful in their attempt to persuade the Collector to reverse the decision to compulsorily acquire the temple property. In this regard, we note that the Singapore Land Authority replied (on 21 July 2004) to a letter sent by Mr R Ravindran, Member of Parliament for Braddell Heights, on behalf of the Trustees, as follows:

> 1 We refer to the appeal by Mr R. Ravindran … on your behalf to the Prime Minister, dated 26 April 2004.
>
> 2 … [T]he Government does not distinguish [between] the religious groups or types of development in deciding which parcels of land to acquire. The acquisition of the temple was made after careful study and consideration.
>
> 3 Unlike the other cases cited by you in your appeal, Jin Long Si Temple is zoned Residential use in the Master Plan. The acquisition of the site will allow better optimisation of land use as it can be amalgamated with the adjoining State land for comprehensive redevelopment. This is part of our continuous effort to optimise land use in land-scarce Singapore. We therefore regret that we are unable to accede to your request not to acquire the land.

9 The Trustees were given up to 31 January 2008 to hand over the temple property to the Collector. They made one final appeal, this time to the Prime Minister, on 23 May 2007. On 20 June 2007, however, the Permanent Secretary for Law and the Permanent Secretary for National Development replied to the Trustees as follows:

> We have studied your appeal and noted that the grounds for retention of Jing Long Si Temple put forth in this appeal have already been addressed previously. We regret to inform that we are not

able to accede to the request to retain the temple by rescinding the acquisition.

To reiterate, the Government does not distinguish among the religious groups or types of development in deciding which parcels of land to acquire. The acquisition of the temple, made after careful study and evaluation, was to allow better optimization of land use by amalgamating with the adjoining State land for comprehensive redevelopment.

10 The appellants filed the application in the present proceedings on 16 January 2008 for a declaratory order pursuant to O 15 r 16 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed).

Our decision

What this appeal is not about

11 Before proceeding to consider the issues before us, it is of first importance to note what this appeal is *not* about. This will assist in clarifying the substantive issue before us (which is the alleged violation of Art 12 of the Constitution), and facilitate the process of arriving at our decision on this particular issue.

12 First, as conceded by counsel for the appellants, the present appeal does *not* involve an alleged violation of *Art 15(1)* of the Constitution, which reads as follows:

> **Freedom of religion**
>
> **15.**—(1) Every person has the right to profess and practise his religion and to propagate it.

13 Secondly, counsel for the appellants, Mr Ang Cheng Hock ("Mr Ang"), confirmed that the appellants were *not* alleging any *bad faith* on the part of the Collector in relation to the acquisition of the temple property.

14 We now proceed to consider the first issue before this court, *viz*, whether the appellants had *locus standi* to institute the present proceedings in the first instance.

Did the appellants have locus standito institute the present proceedings?

15 We can deal with this point shortly. With respect, we disagree with the Judge that the appellants lacked *locus standi* to pursue the present proceedings.

16 Briefly put, the Judge had held as follows (at [15] of the GD):

> In truth, this is a land acquisition matter that has nothing to do with religious freedom and it is for the legal owners of the temple property, namely, the trustees, who are directly affected by the acquisition order, to institute legal proceedings against the authorities if they are of the view that their rights have been infringed.

17 The Judge was, in our view, entirely correct in pointing out that no issue of religious freedom was involved here in the light of the concession by the appellants as noted above (at [12]). However, with respect, it is not, in our view, correct to conclude that only the Trustees had *locus standi* to institute the present proceedings. In this regard, we note that, according to the land-register, the Trustees hold the temple property, as joint tenants, "in trust for San Jiao Sheng Tang Buddhist Association (Reg No. ROS 212/83/REL) registered under the Societies Act, Cap 311, Singapore and having its office at 61, Lorong A-Leng, Singapore 536752".[note: 1] There is no dispute that the

appellants are members of the San Jiao Sheng Tang Buddhist Association. In the circumstances, we are of the view that the appellants, as members of the said association, have *locus standi* to file the application in the present proceedings. The respondent sought to argue that these particulars in the land-register were erroneous (constituting a "questionable entry"[note: 2]), and that a case for rectification of the land-register to reflect the correct position existed. We are unable to accept this argument. The particulars in the land-register are conclusive and it is inappropriate, in our view, for the respondent to seek to go behind the land-register as to do so would undermine the very *raison d'être* of the system of land registration in general and the land-register in particular (and see generally the decision of this court in *United Overseas Bank Ltd v Bebe bte Mohammad* [2006] 4 SLR 884). The respondent should, instead, have applied for rectification of the land-register. It is too late to do so in these proceedings.

18 With respect to the issue of *locus standi*, the respondents have also argued that because the appellants have proceeded by way of O 15 r 16 and not O 53 r 1 of the Rules of Court, they must satisfy a stricter test for *locus standi* as decided by this court in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR 112 ("*Karaha Bodas*"). The argument seems to be that a higher standard of *locus standi* is required for an application under O 15 r 16 than that under O 53 r 1. This argument has no merit whatsoever. *Karaha Bodas* was not concerned with the pursuit of constitutional rights. In our view, it does not matter what procedure the appellants have used. The substantive elements of *locus standi* cannot change in the context of the constitutional protection of fundamental rights.

19 We turn now to the second issue, *viz*, whether there had been inordinate delay on the part of the appellants in instituting the present proceedings.

Was there inordinate delay on the part of the appellants in instituting the present proceedings?

20 We can also deal with this point shortly. We agree with Mr Ang that although there had *prima facie* been a delay on the part of the appellants, this had to be viewed in its context. In particular, we agree with the appellants that they had believed that the Trustees and the authorities were in settlement discussions with a view to arriving at a possible resolution. That this was indeed the case is clear from all the relevant correspondence, some of which has been quoted above. In the circumstances, we are of the view that there had *not* been inordinate delay on the part of the appellants in instituting the present proceedings. In any case, delay in asserting one's constitutional rights may not always be a relevant factor unless the State has been irreparably prejudiced by the assertion of such rights.

21 We turn now to the substantive issue in the present appeal, *viz*, whether the compulsory acquisition of the temple property was in violation of Art 12 of the Constitution.

Was the acquisition of the temple property in violation of Art 12 of the Constitution?

Introduction

22 Article 12 of the Constitution reads as follows:

> **Equal protection**
>
> **12.**—(1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) This Article does not invalidate or prohibit —

(a) any provision regulating personal law; or

(b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion.

The crux of the appellants' case

23 It is important, at the outset, to set out clearly the crux of the appellants' case with regard to this particular issue. The appellants contended that there had been a violation of Art 12 of the Constitution as they (and other devotees of the Temple) had not been accorded equal treatment compared to the worshippers of the Mission and the Church despite the fact that they were all members of the same class. In particular, the appellants argued that although the Temple, the Mission and the Church were all religious institutions located in a predominantly residential area in close proximity to the new Bartley MRT station (and were hence all members of the same class), only the Temple had been acquired pursuant to the Land Acquisition Act. They also observed that the Mission stood to benefit as it would now have an MRT station at its doorstep and that its buildings had (in 2006) been granted conservation status. They further observed that the Church would (like the Mission) also enjoy the benefit of having an MRT station at its doorstep and that it had been granted permission to construct a new three-storey building at its present location (which construction had begun in 2007).

24 The substance of the appellants' arguments appears to be that because owners of the Mission and the Church have been treated favourably by the authorities and that, in contrast, the Trustees have had their property acquired, therein lies the discriminatory action of the State in acquiring their property as all of them belong to the same class of people, *viz*, adherents or believers in a religious faith. The argument seems to be that all religious groups should be treated equally as required by Art 12 of the Constitution, such that if the property (or place of worship) of one religious group is compulsorily acquired by law in an area where other religious groups also have properties (or places of worship), all should be similarly dealt with at the same time.

25 Counsel for the appellants does not argue that there is discrimination of religions and religious groups in Singapore or that there ought to be absolute equality among religious groups in Singapore in relation to the application of the general laws of the State to such groups. What he is really asking the court in the present appeal is this: Why only us, and not they as well, since our properties are situated in the same area? In this regard, we did not understand Mr Ang to be arguing that there should be equality of *result* because, if there should be such equality, the State would not be able to acquire the land of any person without having to acquire the lands of every other person in the country. This would be an absurd proposition. Even though every person is equal in the eyes of the law, the State is entitled to differentiate between persons and their constitutional rights in the application of the law. Otherwise, no state can function as an administrative entity. What we *did* understand Mr Ang to be arguing was that, whilst there was, *factually* speaking, an inequality in *result*, this result came about because of a *normatively* defective *process of treatment* that had

violated Art 12 of the Constitution. In this regard, the law is well established. The question is whether there is a reasonable nexus between the state action and the objective to be achieved by the law, on the assumption that the law itself is not in violation of Art 12 itself (which is conceded by the appellants in this appeal). In our view, the answer must therefore lie in the reasons why the State had chosen to acquire the temple property and not those of the Mission and the Church, and whether the reasons show that there was any discrimination against the appellants as members of the Temple.

26 The law in this respect is set out clearly in *Ong Ah Chuan v PP* [1980-1981] SLR 48 where the Privy Council (*per* Lord Diplock, delivering the judgment of the Board) said (at 64, [35]):

> Equality before the law and equal protection of the law require that like should be compared with like. What Article 12(1) of the Constitution assures to the individual is the right to equal treatment with other individuals in similar circumstances. It prohibits laws which require that some individuals within a single class should be treated by way of punishment more harshly than others, it does not forbid discrimination in punitive treatment between one class of individuals and another class in relation to which there is some difference in the circumstances of the offence that has been committed.

27 As the appellants do not challenge the validity of the Land Acquisition Act, it is not necessary for us to discuss the principle of reasonable classification of laws (as to which, see generally *PP v Taw Cheng Kong* [1998] 2 SLR 410).

28 In the present case, we are only concerned with the constitutionality of the Collector's decision to acquire the temple property and not the properties of the Mission and the Church. It is clear from the terms of Art 12(2) itself that although a law may be constitutional, its application to persons may nevertheless be unconstitutional. In the Singapore Privy Council decision of *Howe Yoon Chong v Chief Assessor, Singapore* [1980-1981] SLR 36, the Privy Council (*per* Lord Fraser of Tullybelton, delivering the judgment of the Board), observed thus (at 41, [13]):

> The Constitution, being the supreme law of Singapore, will of course prevail over any law *or any administrative practice inconsistent with it.* Their Lordships do not in any way underrate the fundamental importance of the Constitution or of art 8 [Art 12 of the Constitution] in particular. … *But a breach of the equal protection clause could not be established by proving the existence of inequalities due to inadvertence or inefficiency unless they were on a very substantial scale*. Several authoritative decisions on the equal protection provision of the Fourteenth Amendment to the American Constitution were brought to the attention of their Lordships. Some caution is required in applying these authorities to the Constitution of Singapore but their Lordships see no reason to doubt that *'intentional systematic under-valuation'*, such as was envisaged by the Supreme Court in *Sioux City Bridge Co v Dakota County* (1922) 260 US Reports 441; 67 Law Ed 340 would be a breach of art 8 of the Singapore Constitution. *No case of that sort was made in this appeal. Something less might perhaps suffice, but their Lordships are of opinion that, where the defects are the result of inadvertence or inefficiency, such as is alleged in this case, the test of unconstitutionality would not be substantially different from the test of validity of the list. In the present case defects on the necessary scale have not been proved to exist.* [emphasis added]

29 Similarly, in *Howe Yoon Chong v Chief Assessor* [1990] SLR 4, the Privy Council (*per* Lord Keith of Kinkel, delivering the judgment of the Board) observed thus (at 8–10, [13]–[18]):

> 13 The question is whether this state of affairs amounted to a contravention of art 12(1) of the Constitution. Their Lordships were referred to a number of cases in the property tax field in

the United States of America, in relation to the equal protection of the law clause in the Fourteenth Amendment to the Constitution of that country. In *Sunday Lake Iron Co v Township of Wakefield* (1918) 247 US 350 the Supreme Court made the following statement of principle at p 352:

> The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property. *Raymond v Chicago Union Traction Co* 207 US 20,35,37. It is also clear that mere errors of judgment by officials will not support a claim of discrimination. There must be something more — something which in effect amounts to an intentional violation of the essential principle of practical uniformity. The good faith of such officers and the validity of their actions are presumed; when assailed, the burden of proof is upon the complaining party.

14 That statement was reaffirmed by the Supreme Court in *Sioux City Bridge Co v Dakota County* (1922) 260 US 441. The effect of the decisions is that in an appropriate case the owner of a property valued higher than comparable properties may be entitled to have its value reduced to the level of the latter properties, even though that would be substantially less than its true value assessed in accordance with the relevant statute.

15 A number of the American cases were cited to this Board in *Howe Yoon Chong v Chief Assessor* [1981] 1 MLJ 51 [[1980-1981] SLR 36], an appeal by the present appellant in relation to a different property. The evidence about the state of the valuation list was broadly similar, though not so detailed, to that in the present case. It was contended for the appellant that the list was so defective, by reason of omissions and many properties being entered at grossly inadequate values, as to be invalid. It was also contended that entering the appellant's property in the list at its up-to-date value, when the values entered for many other properties were too low, violated art 12(1) (then art 8(1)). Both contentions were rejected. Lord Fraser of Tullybelton, delivering the judgment of the Board, said at p 53:

> [see quoted passage at [28] above]

16 *Counsel for the appellant argued that in the present case the anomalies in the valuation list did not arise through inadvertence or inefficiency, but as a result of a deliberate policy towards the application of the relevant provisions of the Act of 1961, and that this amounted to 'intentional and arbitrary discrimination' within the meaning of the American authorities.* It was maintained that in order to preclude such a state of affairs and secure conformity with art 12(1), there should be read into the Act a provision similar to the 'tone of the list' requirement in s 20 of the English General Rate Act 1967.

17 In their Lordships' opinion it is clear that, as the American authorities recognize, absolute equality in the field of valuation for property tax purposes is not attainable. *Inequalities which result from the application of a reasonable administrative policy do not amount to deliberate and arbitrary discrimination*. Thus in *Hamilton v Adkins* (1948) 35 SR 2d Series 183 a system whereby a county was divided into four districts, one of which was revalued in each of four successive years, was held by the Supreme Court of Alabama not to infringe the equal protection clause of the Fourteenth Amendment. In Singapore the Chief Assessor, in the exercise of his discretion under s 10 of the Act of 1961, might choose to make up a new valuation list

each year incorporating up-to-date values for all properties. That would be impracticable. He could achieve the same result by operating the last part of (a)(ii) of s 18(7), by in each year amending all values by reference to increased rentals obtained for similar properties. That would be equally impracticable. The most that the Chief Assessor can do as regards carrying out a general valuation is to do so at such intervals as the resources available to him permit. It is not maintained that he could or should have done so at shorter intervals than actually occurred, in particular that he should have done so in or before 1976. In the meantime he revalued in each year properties which had undergone a specific change of circumstances, and did so on the basis of current rentals, as the Act required. It is to be observed that according to the evidence, some 60% of the properties in the Binjai Park area had been revalued on this ground between 1970 and 1976. The primary cause of the disparities of valuation which have emerged is inflation.

18 The Act of 1961, by its general scheme and its specific provisions, aimed at practical equality of valuations on an up-to-date basis. The extent to which practical equality was capable of being achieved, in an inflationary environment, depended on the extent of the resources available to the Chief Assessor. Some values were bound to fall behind others. The extent to which this happened depended on the progress the Chief Assessor was able to make in keeping the valuation list up-to-date, the level of inflation, and the passage of time. It was these circumstances and not any 'intentional violation of the essential principle of practical uniformity' which led to disparities. The extent of these disparities at a particular time is not in itself capable of evidencing an infringement of art 12(1), nor is the absence of some legislative provision which, by requiring an artificially low level of valuation for properties which had undergone a change of circumstances, would have prevented them from emerging. In the whole circumstances their Lordships can find nothing in the general scheme of the Property Tax Act 1961, or in the measures adopted by the Chief Assessor in administering its provisions, which can properly be held to amount to deliberate and arbitrary discrimination such as to infringe art 12(1) of the Constitution.

[emphasis added]

30 An executive act may be unconstitutional if it amounts to intentional and arbitrary discrimination. In *PP v Ang Soon Huat* [1990] SLR 915, the Singapore High Court (*per* Chan Sek Keong J, delivering the judgment of the court), observed thus (at 924, [22]):

In *Howe Yoon Chong v Chief Assessor …* [[1990] SLR 4], the Privy Council held that the equal protection clause [in Art 12] is contravened if there is deliberate and arbitrary discrimination against a particular person. Arbitrariness implies the lack of any rationality.

31 What the appellants have asserted in these proceedings is that the application of the Land Acquisition Act to them and not to the owners of the Mission and of the Church is a violation of Art 12 of the Constitution as it is discriminatory against them. However, it is not clear where the discrimination lies other than in the consequential fact that the properties of the Mission and the Church were not acquired but that of the Temple was. There was no allegation of arbitrary action on the part of the Government: indeed, it is conceded the acquisition was proceeded with in good faith (see above at [13]).

32 In our view, the facts are plain. Mr Eng Gim Hwee ("Mr Eng"), a planner with the Urban Redevelopment Authority, stated in his affidavit (at para 2) that "the government has had a long standing policy to optimise the land use around new MRT stations";[note: 3] and (at para 5) that "[i]n the case of the Acquired Land [the temple property], the State land adjoining it provided an ideal opportunity to intensify the use of the Acquired Land compared to what could be achieved by its

independent development".[note: 4] He further stated that "[a]n amalgamation of the Acquired Land with the adjoining State land would … see land use optimised through a significant increase in the development potential of the Acquired Land".[note: 5] Indeed, a close examination of the relevant map (appended as Appendix A to this judgment[note: 6]) reveals this to be the case inasmuch as the temple property constitutes a plot that lies at the corner of what is a substantial plot of state land. Its amalgamation with the state land would not only appear reasonable but would also enable the entire plot of land to be developed in as optimal a fashion as possible.

33 In contrast, and turning, first, to the plot on which the Church is situated, it was pointed out (correctly, in our view) in para 7 of Mr Eng's affidavit, as follows:[note: 7]

> As for the Church site, the site context did not even give any reasonable opportunity for amalgamation. There was no adjoining State land with the Church or with the lands immediately surrounding the Church. As such, there was simply no reason to disturb the existing low density housing area by acquiring the Church site either by itself or as part of a larger comprehensive redevelopment plan with the lands surrounding it.

34 In so far as the plot on which the Mission is situated, it was stated in para 8 of Mr Eng's affidavit, as follows:[note: 8]

> As for the Mission site, the 3 main buildings within the site, that is the [Mission's temple], Boys' Home and Cultural Centre, were already under study for conservation before 2002. As such, it was not appropriate to undertake acquisition of the Mission site on its own or as part of a larger comprehensive redevelopment plan with the lands surrounding it. The 3 main buildings were eventually gazetted for conservation in 2006.

This is a valid planning consideration, especially if one takes into account the fact that not merely does the Mission comprise the three main buildings but these buildings are also functionally integrated. This also meets the appellants' argument that the football field on the Mission site was much larger and thus ought to have been acquired by the Collector instead of the temple property. Indeed, as the respondent also correctly pointed out, this had nothing to do with proper land use planning as such.[note: 9] Further, an examination of the map (at Appendix A to this judgment) also reveals that the acquisition of part of the site on which the Mission is situated would result in an even more irregularly-shaped plot of state land.

35 Although it is clear (as we have already noted) that the appellants had not alleged any bad faith on the part of the Collector, Mr Eng's affidavit made this clear (at para 9) beyond peradventure:[note: 10]

> No special considerations relating to the different religious groups were taken into account in the preparation and confirmation of comprehensive redevelopment plans. The Government acts impartially when land use planning objectively shows that a religious site is required for purposes of comprehensive redevelopment.

Indeed, it is clear that the Collector arrived at his decision to acquire the temple property based *solely* on *planning considerations* (which have in fact been summarised above).

36 We should also mention that the appellants have argued that there was growing on the temple property a very old Bodhi tree which was a sacred tree in Buddhism, and that its presence would make it difficult for the State to develop the temple property when it was acquired. Again, it is not clear what the relevance of this argument is with respect to the constitutionality of the

acquisition, since the appellants have accepted that the acquisition is neither in bad faith nor in violation of their constitutional freedom of worship. We accordingly place no weight whatsoever on this argument.

37 The appellants also argued that the temple property was furthest from the proposed MRT station as compared to the sites on which the Mission and the Church were situated. Quite apart from the fact that this argument did not entail any allegation of bad faith on the part of the Collector, we agree with the respondent that "nothing turns on the marginal differences in distance".[note: 11]

38 In the circumstances, it is clear that there has been no violation of Art 12 of the Constitution.

39 Before we conclude our judgment in this appeal, we should advert to the Judge's reference to s 5(3) of the Land Acquisition Act and the suggestion that this provision was determinative of the matter in favour of the Collector in the context of the present proceedings (at [25] of the GD). That section reads as follows:

> The notification shall be conclusive evidence that the land is needed for the purpose specified therein as provided in subsection (1).

With respect, however, an acquisition can be challenged for bad faith, notwithstanding s 5(3) of the Land Acquisition Act (see the Malaysian Privy Council decision of *Syed Omar bin Abdul Rahman Taha Alsagoff v The Government of the State of Johore* [1979] 1 MLJ 49 at 50 as well as the Singapore High Court decision of *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2006] 3 SLR 507 at [36] and the decision of this court in *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR 568 at [37]–[38]). However, as bad faith has not been alleged against the Collector, s 5(3) is applicable to the disposition of this case.

Conclusion

40 For the reasons given above, it is clear that there has been no violation of Art 12 of the Constitution. The appeal is dismissed with the usual consequential orders. Given that we have found in favour of the appellants on the arguments relating to *locus standi* and delay, the respondent is entitled to one half of its costs both here as well as in the court below.

APPENDIX A

[LawNet Admin Note: Image 1 is viewable only to LawNet subscribers via the PDF in the Case View Tools.]

[note: 1]See Appellants' Core Bundle, vol 2 ("2 ACB"), p 142.

[note: 2]See Respondent's Case ("RC"), p 17.

[note: 3]See 2 ACB, p 118.

[note: 4]*Id*, p 119.

[note: 5]Para 6 of Mr Eng's affidavit, 2 ACB, p 119.

[note: 6]Mr Eng's affidavit, Exhibit "EGH-1"

[note: 6]Mr Eng's affidavit, Exhibit "EGH-1".

[note: 7]See 2 ACB, p 120.

[note: 8]*Id*.

[note: 9]See RC, p 30, para 66.

[note: 10]See 2 ACB, p 120.

[note: 11]See RC, p 29, para 65.

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Image 1

