Chief Assessor *v* Glengary Pte Ltd
[2013] SGCA 30

Case Number : Civil Appeal No 132 of 2012/Z

Decision Date : 25 April 2013

Tribunal/Court : Court of Appeal

Coram : Sundaresh Menon CJ; Chao Hick Tin JA; Andrew Ang J

Counsel Name(s) : Quek Hui Ling, Joyce Chee, Lau Kai Lee and Pang Mei Yu (Inland Revenue Authority of Singapore) for the appellant; Tan Kay Kheng, Tan Shao Tong, Novella Chan and Jeremiah Soh (WongPartnership LLP) for the respondent.

Parties : Chief Assessor — Glengary Pte Ltd

Revenue Law – Property Tax

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2012] 4 SLR 1130.]

25 April 2013 Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

1 This appeal concerns the proper interpretation of s 2(3)(b) of the Property Tax Act (Cap 254, 2005 Rev Ed) ("the Act"), which permits the Chief Assessor to assess the annual value of a property under development with reference to the estimated value of the land "as if it were vacant land with no building erected, or being erected, thereon".

2 The respondent in this appeal ("the Respondent") is the developer of The Sail@Marina Bay ("The Sail"), a mixed development located at Marina Boulevard on the site TS 30 Lot LP 650 (henceforth referred to as "the Land" or "the Property" as may be appropriate). By 2005, when The Sail was still at an early stage of construction, the Respondent had sold most of the residential units in the development ("the pre-sales"). Property tax on the Land for the years 2007 and 2008 was assessed by the Chief Assessor (henceforth referred to as "the Appellant" or "the Chief Assessor" as may be appropriate), pursuant to s 2(3)(b) of the Act. The parties' arguments at the hearing below, as well as the arguments before us, essentially centred on two competing interpretations of "vacant land" in s 2(3)(b) of the Act, *viz*:

(a) "Vacant land" precludes consideration of the pre-sales, which pertain to buildings on the Land or being erected thereon ("interpretation (a)"); or

(b) "Vacant land" allows for consideration of the pre-sales, which are encumbrances upon the Land ("interpretation (b)").

3 The parties had agreed that if interpretation (a) was correct, the annual value of the Land would be $51,409,000 with effect from 1 April 2007 and 1 January 2008, whereas if interpretation (b) was correct, the annual value of the Land would be $27,000,000 with effect from 1 April 2007 and 1 January 2008.

Background to the dispute

4 In 2002, a 99-year lease of the Land, with effect from 12 August 2002, was acquired by the Respondent from the State. In December 2003, the Respondent submitted an application through its architect to the Urban Redevelopment Authority for provisional permission to build residential and retail units on the Land. Provisional approval for the development plan was granted in February 2004.

5 The Respondent began pre-sales of the residential units in The Sail in October 2004, before construction began on 22 November 2004. Ms Chua Beng Ee, a property valuer engaged by the Respondent, testified that it was a common practice for developers to launch sales of the units on a development even before construction of those units had commenced. This would enable the developers to hedge their bets in case of a fall in property prices after the units were constructed. This assertion was not disputed by the Appellant.

6 By the end of 2004, 465 residential units (41.04% of the total number of units in The Sail) had been sold. In 2005, 641 residential units (56.58% of the total number of units in The Sail) were sold. What remained were just five residential units, with four being sold in 2006 and the last in January 2007. Thereafter, property prices began to rise steeply. The 22 retail units in The Sail were sold in 2009, after the Property had been valued by the Appellant.

7 In early 2007, pursuant to s 2(3)(b) of the Act, the Appellant issued a notice increasing the annual value of the Land from $26,000,000 to $59,091,000 with effect from 1 April 2007. On 2 May 2007, the Respondent objected to the assessment. The property valuation notice for 2008 similarly valued the Land at $59,091,000. The Respondent objected to this assessment as well on 23 October 2008.

8 The Temporary Occupation Permits for phase 1 and phase 2 of The Sail were issued on 29 May 2008 and 29 September 2008 respectively, and the Certificate of Statutory Completion was issued on 17 April 2009.

9 The Respondent's objections to the valuation of the Land for 2007 and 2008 were disallowed on 28 and 29 August 2009 respectively and the Respondent appealed to the Valuation Review Board ("VRB"), claiming that the assessment was excessive and that the Appellant did not give sufficient consideration to the size, plot ratio and location of the Property. The Respondent sought a reduction of the annual value from $59,091,000 to $41,364,000 for the assessment for 2007 and from $59,091,000 to $33,091,000 for the assessment for 2008.

10 After filing its skeletal outline report with the VRB on 4 November 2009, the Respondent raised a new ground of appeal, *viz*, that the Appellant had misinterpreted s 2(3)(b) of the Act by disregarding the pre-sales. This was the sole issue before the VRB.

11 The VRB dismissed the Respondent's appeal. First, it found that a plain reading of s 2(3)(b) of the Act meant that the Appellant should ignore any process of development on the Land, including the pre-sales. Second, it found that on a purposive reading of the provision, Parliament intended a straightforward formula of "vacant land" to apply to all types of land under development, irrespective of whether a building was in the course of being built thereon and also irrespective of whether the units in the building had been pre-sold.

The decision below

12 The Respondent appealed the VRB's decision by way of Originating Summons No 1075 of 2011 to the High Court.

13 The Respondent contended that the Appellant had erred in law and in fact by interpreting "vacant land" in s 2(3)(b) of the Act to preclude consideration of the pre-sales. It argued that the phrase "no building erected, or being erected, thereon" indicated that the provision was concerned with the physical state of the Land whereas pre-sales of residential units usually occurred before the Land was physically changed by construction. The Respondent further argued that the pre-sales were encumbrances which depressed the gross development value of a piece of land as an incoming developer would pay less for a development where a substantial proportion of the units in the development had already been sold.

14 The Appellant argued that the statutory fiction of "vacant land" must be given full effect without drawing an artificial distinction between the physical state of the Property and the pre-sales connected with the proposed development. The Appellant averred that the pre-sales, rather than being encumbrances, were private arrangements between the Respondent and the purchasers of the residential units and were incidental to the Land. The Appellant further contended that the Respondent's approach would give rise to absurd consequences in the sense that the value of the Land would be pegged to market conditions at the time when the pre-sales were effected and not as at the time when the valuation of the Land was to be determined.

15 When the decision of the VRB came up on appeal, the High Court judge ("the Judge") in *Glengary Pte Ltd v Chief Assessor* [2012] 4 SLR 1130 ("the Judgment") reversed that decision. Tracing the legislative history behind s 2(3)(b) of the Act, the Judge found that s 2(3)(b) of the Act was intended to create an alternative formula for calculating land value, *viz*, by reference to the capital value of the land, but was silent as to the method of calculating capital value (the Judgment at [43]). Accordingly, the Judge found that there was no legal basis for the argument that the deeming of the Property (which was then under development) as "vacant land" under s 2(3)(b) of the Act precluded the Appellant from taking into consideration the pre-sales in determining annual value, given that the pre-sales could occur without construction having commenced on a piece of land and could form part of the existing circumstances of the land at the time of valuation, which was the case here. Crucially, the Judge also found that the pre-sales affected the value of the Land and were not mere private arrangements between the purchasers of the individual units and the Respondent developer and should be taken into account in determining the annual value of the Land.

The Appellant's case and the Respondent's case

16 Before us, the Appellant's case is largely the same as that argued before the Judge. The Appellant emphasises that taking into account the pre-sales would be wholly incompatible with the statutory fiction of "vacant land" as it would amount to including the value of a building "via a backdoor route". The Chief Assessor has powers to alter the Valuation List (a list it is required to prepare under s 10 of the Act) as and when the need arises. The Appellant argues that the Valuation List is meant to be "a nimble document that can be updated to reflect changes in annual value in accordance with prevailing market conditions" and that should the Appellant be compelled to take into consideration the pre-sales in a rising market to determine the annual value of the Land that would prevent the true market value at the time from being reflected in the valuation of the Land.

17 The Respondent accepts that the value of the buildings should be disregarded in determining the annual value of the Land due to the statutory fiction of "vacant land" in s 2(3)(b) of the Act. It argues, however, that the pre-sales are encumbrances on the Land rather than private arrangements in relation to the buildings to be erected. The Respondent contends that it would be contradictory for the Appellant to accept that easements would affect the value of the Land, but not the pre-sales although the pre-sales could result in caveats being lodged by the purchasers of the residential units. Any developer looking to purchase the Land would certainly ask for a discount because of the 1,111

caveats lodged or expected to be lodged against the proposed development.

Our decision

18 The sole issue in this appeal is whether the Appellant was correct to disregard the pre-sales in her assessment of the value of the Land pursuant to s 2(3)(b) of the Act.

19 Section 2(3)(b) of the Act reads as follows:

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

20 It is clear from a plain reading of s 2(3)(b) of the Act that the usual principles of reality and *rebus sic stantibus* must be circumscribed, or more accurately, give way to the statutory fiction of "vacant land". It is not enough for the Respondent to argue that the pre-sales are part of the circumstances surrounding the Land; it must also demonstrate that the pre-sales are a relevant circumstance even though the Land is to be deemed *vacant* land.

The purpose of the statutory fiction of "vacant land"

21 As analysed by the Judge in the Judgment, the statutory fiction of "vacant land" permits the assessment of land value by reference to its capital value. The Property Tax (Amendment) Act (Act 24 of 1965) ("the 1965 Act") introduced what is now s 2(3)(b) of the Act, which allows the Chief Assessor to calculate the annual value of a property as if it were vacant land whether or not there is a building thereon or a building in the course of construction by reference to its capital value instead of its gross rental value, thus statutorily overturning *Chief Assessor v Town and City Properties Ltd* [1965-1967] SLR(R) 477 and clarifying that the Chief Assessor had the discretion to assess the value of land which was in the process of development as vacant land. Whereas measuring the value of a plot of land by reference to its hypothetical rental value measures the actual use and occupation of the land (see *Shell Eastern Petroleum Pte Ltd v Chief Assessor* [1998] 3 SLR(R) 874 at [13]), measuring the value of that land by reference to its capital value measures the *potential* use and occupation of the land. The hypothetical rent is limited by the buildings and particular uses to which the land has been put. On the other hand, an assessment based on capital value permits the valuer to take into account wider considerations, including the full potential development value of the land as a vacant piece of land.

22 As stated in [15] above, the Judge did a historical survey of the origin of s 2(3)(b) of the Act which genesis is to be found in the Municipal (Amendment) Ordinance 1919 (SS Ord No 12 of 1919) ("the 1919 Ordinance"). The purpose of the 1919 Ordinance was to encourage the development of valuable land which "were occupied by small mean dwellings" (Proceedings of the Legislative Council of the Straits Settlements for the Year 1919, 13 January 1919, at p B6). The immediate effect of the 1919 Ordinance, in the words of the Judge at [26] of the Judgment, was to "[create] an alternative method of calculating the annual value of a house or building which, it was contemplated, would be chosen by the authorities where this was more beneficial to the public interest". The exact formulation of words which we now find in s 2(3)(b) of the Act was first introduced into our law by

the 1965 Act. As far as the present issue is concerned, the gap in the 1919 Ordinance which the 1965 Act sought to plug was the doubt (which had in fact resulted in some litigation) as to whether the option of assessing the value of a property based on the statutory fiction of it being a vacant land was available to the Chief Assessor where the building on a piece of land was still in the process of construction. The Judge had quite rightly observed at [31] of the Judgment that s 2(3)(b) of the Act is a deeming provision in the sense that it "creates a statutory fiction that, for the purposes of the assessment of annual value, there are no existing building or buildings being erected on the piece of land". The Judge, having stated that s 2(3)(b) of the Act should be interpreted purposively (at [37] of the Judgment) then went on to ask whether it necessarily followed from the statutory fiction of "vacant land" that no committed sales (or pre-sales) could have taken place on a piece of vacant land. Her central premise seems to be this statement at [40] of the Judgment:

> ... There is no legal basis for the argument that there cannot be committed sales, or any legal encumbrances for that matter, on a piece of land that is vacant. A piece of vacant land may be encumbered by easements, restrictive covenants, or, as in this case, committed sales. The existence and validity of such encumbrances do not depend on the *physical* existence of any fixture or buildings on the land.
>
> [emphasis in original]

The Judge then went on to state at [43] of the Judgment that s 2(3)(b) of the Act was, even taking into account the historical context and Parliamentary debates on the definition of "annual value", "*silent* as to the *method of calculating the capital value of such land* [emphasis in original]". Accordingly, she held that the principle of reality dictated that the pre-sales may be taken into account in determining the annual value (the Judgment at [47]).

23 With respect, in our opinion, the Judge erred in the following aspects: (i) not fully appreciating the objective behind s 2(3)(b) of the Act, (ii) regarding the pre-sales as an encumbrance on the Land akin to an easement or a restrictive covenant, and (iii) failing to appreciate that the annual value of a property ought to be determined on the basis of current rental or current capital value, as the case may be, and not on the basis of outdated data.

24 As alluded to in [21] above, while the immediate object behind the 1919 Ordinance in granting an option to the local authorities to assess annual value based on the fiction of the land being vacant (and to impose a tax based on a percentage of the capital value of the land) was to enable the authorities to collect more taxes from the land owner, its true aim was, through this fiscal measure, to incentivise the owner, in land-scarce Singapore, to develop the land to its full development potential rather than leaving the land undeveloped or under-developed for an indefinite period of time. By this legislative measure, the owner of a large piece of land with only a modest dwelling could no longer pay tax based only on the rent obtainable from the dwelling and would thus be discouraged from leaving the land undeveloped or under-developed for an indefinite period of time. Accordingly, the owner of such a land would have to think doubly hard as to whether it would be worth his while to retain the land or whether he should develop it to its full development potential or, if he is not able (for whatever reason) to do so, to dispose of it to another who is able to realise its full development potential value. We should also add that the policy of maximising land use was also apparent in a measure which the Government took in 1960 in refusing to grant refunds of property tax on vacant property. Dr Goh Keng Swee, the then Minister for Finance, stated at the second reading of the Property Tax Bill (Bill 115 of 1960) (which was eventually enacted as the Property Tax Ordinance (Ord No 72 of 1960)) (*Singapore Legislative Assembly Debates, Official Report* (29 December 1960) vol 14 at col 904):

> … in the present circumstances, where there is a shortage of housing, it is absolutely scandalous that any large numbers of houses should be vacant. ...

25 Even in 1963, when acute housing shortage in Singapore had in a broad sense been alleviated, a refund of taxes would only be allowed where a house owner has made "a genuine effort to let out his house at a fair rental but has failed to do so" (*Singapore Legislative Assembly Debates, Official Report* (19 December 1963) vol 22 at col 1020). In both situations, it appears that there was an intention to discourage less than optimal use and occupation of property, although the latter amendment (*ie*, Property Tax (Amendment) Act (Act 25 of 1963)) was more accommodating.

26 The issue of shortage of land in Singapore also played a significant part in other related policy considerations. An instance of that was the introduction of the Land Titles (Strata) Amendment Bill in 1998 (Bill 28 of 1998) (which eventually was enacted as law) which sought to promote collective sales of buildings in order to "take advantage of enhanced plot ratios to realise their full development potential… [and] make available more prime land for higher-intensity development" (*Singapore Parliamentary Debates, Official Report* (31 July 1998) vol 69 at col 601). The promotion of full development potential on an undeveloped or under-developed site would complement other land use schemes, and it is completely consistent with that policy that we have s 2(3)(b) of the Act.

27 The fiction of "vacant land" created in s 2(3)(b) of the Act is to enable a piece of land to be assessed based on its potential use and occupation irrespective of what is already on the land or is in the process of being erected thereon (the proviso to that provision). This being the legislative wording, it follows that the value of any buildings on the land cannot form part of the assessment as they constitute *actual* and not *potential* use and occupation. If buildings on a land are to be disregarded, we do not see how sales of units in a building (already built or to be built) on the land can have any relevance. Those sales have to be ignored for the purposes of assessing the annual value of the land. The income which the Respondent stands to gain from the pre-sales would similarly be irrelevant to an assessment of the value of the Land. More importantly, the fact that the statutory fiction of "vacant land" aims at incentivising *optimal* potential use and occupation means that any arrangement upon the land which limits the full development potential of the land must be disregarded. Otherwise, if two sites of similar size and development potential were developed differently, one maximising its gross plot ratio while the other developed only to half its full development potential, the value of the plots of land would differ just because of *how* the developer had chosen to develop the site. This would be an absurd result, and one which would completely defeat Parliament's purpose in incentivising *optimal* potential use and occupation of undeveloped land or land under development. Accordingly, any assessment of annual value which seeks to tie the value of the land to the value of the pre-sales and thus restricts the *potential* use and occupation of the land, would run counter to the statutory fiction of "vacant land" and in turn be inconsistent with the wording of s 2(3)(b) of the Act. The only exceptions are encumbrances which run with the land as they will restrict the development potential of the land. Such encumbrances could affect the value of the land.

The nature of the pre-sales and current values

28 We now turn to consider the second and third issues on which we think that the Judge had erred (see [23] above). The Respondent has argued that the pre-sales are encumbrances, an argument which the Judge seemed to have accepted. The Respondent also argued that it was inconsistent for the Appellant to concede that easements could affect the value of a property, and yet disregard the pre-sales. With respect, we are unable to agree. The pre-sales are wholly unlike an easement. An easement, a right accorded to an adjacent land (the dominant tenement) and which restricts the enjoyment of the servient land by its owner, runs with the land and is capable of binding

all third party purchasers of the servient land. In the words of the learned authors of *Gale on Easements* (Sweet & Maxwell, 19th Ed, 2012) at para 1-01, "[a]n easement is a right over the land of another, which has certain limiting characteristics". An easement is thus a restrictive burden on the use of the servient land. It could arise out of an agreement between the owners of two adjacent plots of land, with or without consideration having passed. It could also arise from the act of the owner of a large plot of land when he decides to divide it up into two or more smaller plots. Because an easement could affect the enjoyment of the servient land and because it runs with the land, it could affect the development potential of the servient land and, in turn, its value.

29 In contrast, a pre-sale is just a contract between the developer and the purchaser of a unit within the planned development whereby the former agrees to sell the unit to the purchaser at an agreed price. This sale price will no doubt encompass the appropriate portion of the land price, the building cost and the profit margin of the developer. Invariably, the purchaser, in order to protect his interest in the unit which he has purchased and made initial payment for, would lodge a caveat against that unit. The fact that a caveat was lodged against the unit under development does not change the nature of a pre-sale. The object of a caveat is to give notice to third parties of the purchaser's interest in the unit. It is not an encumbrance on the land. In Black's Law Dictionary (West Publishing, 9th Ed, 2009), an "encumbrance" is defined to mean, *inter alia*, "[a] claim or liability that is attached to property". The caveat scheme is merely a "procedure which precludes dealings in land which are conflicting with the rights of the caveator"; see Tan Sook Yee, Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at para 15.3). The caveat is a notice on the register which gives the caveator a chance to defend a *potential* interest in land. It does not automatically signify that the caveator has *an immutable proprietary* interest to which any future purchaser must be subject, much less is it capable of changing the nature of the potential interest into an immutable proprietary one (see *Alrich Development Pte Ltd v Rafiq Jumabhoy* [1993] 1 SLR(R) 598 (at [36]–[37]) and *The Asiatic Enterprises (Pte) Ltd v United Overseas Bank Ltd* [1999] 3 SLR(R) 976 (at [29]–[30])). It follows that a caveat is not a claim that is *attached* to the property and cannot be an encumbrance. It is necessary to look behind the *fact* of the caveat to the facts which gave rise to the caveat. These facts are that the developer chose to develop the land in a particular way and pre-sold the units on the basis of his choice of what the *actual* use and occupation of the land would be. The value of the pre-sales was determined *by individual bargains* between the developer and the purchasers of the units.

30 As regards the actual assessment for the purposes of s 2(3)(b) of the Act, the Respondent argues that the value of the Land should follow the value of the pre-sale prices. However, the Appellant makes two pertinent points against that. First, the price which the pre-sale of each unit fetched was a matter of individual bargain between the Respondent developer and the purchaser. If, for whatever reason, the Respondent developer should sell a unit at a special price, there is no reason why the Appellant should be bound by that pre-sale price in determining the annual value of the Land for the purposes of s 2(3)(b) of the Act. Secondly, and more importantly, this bargain was made in 2005, and it is not disputed that market conditions had changed significantly by the time of valuation by the Chief Assessor in 2007 and 2008. If the pre-sales were to be taken as indicative of the market value of the Land in 2007 and 2008, this would amount to assessing the value of the Land for 2007 and 2008 by reference to 2005 prices.

31 Under s 2(1) of the Act, the "annual value" of a house, building or land (unless the Chief Assessor should exercise the option under s 2(3) of the Act in assessing the annual value) is typically the "gross amount at which the same can reasonably be expected to be let from year to year". This is an objective exercise and the actual rent which is paid by the tenant to the owner may not be decisive of the property's annual value. Indeed, it is trite law that the determination of rental value follows the hypothetical rent and not the actual rent. Property tax is a tax on ownership and the

definition of "annual value" in s 2(1) of the Act reflects that. As Lord Pearce opined in *Dawkins (Valuation Officer) v Ash Brothers and Heaton Ltd* [1969] 2 AC 366 (at 381):

> Rating seeks a standard by which every hereditament in this country can be measured in relation to every other hereditament. It is not seeking to establish the true value of any particular hereditament, but rather its value in comparison with the respective values of the rest. ...

32 Features upon the land which affect the hypothetical rent, such as easements and zoning laws, may be taken into account, but the actual bargain concerning the land may well be irrelevant in establishing the value of the land in comparison with the values of other similar lands.

33 Where the rent is palpably low or the tenancy agreement was entered into a number of years ago when the market was either better or poorer than the current market conditions, that rent would certainly not represent the rent which the premises could reasonably obtain from year to year. The same rationale will apply where the Chief Assessor exercises the option under s 2(3)(b) to assess annual value based on the capital value of the property. In considering proviso (b) to s 2 of the Property Tax Ordinance 1960 (Ord No 72 of 1960) (the predecessor of s 2(3)(b) of the Act) in the case of *Bata Shoe Co Ltd v Chief Assessor* [1959-86] SPTC 71, the VRB opined (at 83–84):

> Proviso (b) of the definition of "an annual value" is a method of ascertaining the annual value of a property. It is of local origin. The option is on the Chief Assessor to invoke it. It is designed, as was submitted by counsel for the Chief Assessor, for a property which has no rental or where the landlord has assigned a rental which is palpably low that the Chief Assessor cannot accept [it]. ...

34 In other words, s 2(3)(b) of the Act was not introduced to provide a wholly different measure; it was intended to provide an alternative method of assessing annual value to the one based on reasonably obtainable rental which proved inadequate in particular situations. It is therefore imperative that our approach towards rental value and capital value be consistent. Sales data which are outdated and cannot and do not represent the current market value of a property can be of no relevance in determining the capital value of a property. It must be borne in mind that, whether the determination of the annual value is based on rental value or on capital value, the assessment must always rest on the current market value. It is also important to bear in mind that there is fairness in this system because the market moves, and in as much as it can go up, it can also come down. In the result, we find that it would be inconsistent with general rating practice, as well as the scheme of taxation as reflected in the Act, for the pre-sales to be taken into consideration where it is clearly recognised that the values established by the pre-sales do not reflect the current capital values. We acknowledge that it does not follow from this analysis that the pre-sales of units in a development *could never be indicative* of the true value of the land even as deemed vacant. Relating back to the present case, if it had been established that the property market had remained stagnant between 2005 and 2007/2008, and that the development approved for the Land had utilized the full development potential of the Land, the pre-sales could well be evidence of the market value of the Land for 2007/2008. Of course, the Appellant would also be entitled to consider other relevant sales data. We emphasise the words "could well be". But that is not the position in the present case. Instead, the Appellant and the Respondent had agreed that the property market had moved significantly upwards in those years and that the prices of the pre-sales could no longer represent the true market value of the Land in 2007 and 2008. Indeed, had the property market been stagnant during that period, the Appellant would not have issued a fresh notice of assessment based on the enhanced value, and the present dispute would not have arisen between the parties and they would not, in turn, have come before us.

35 In the preceding paragraph (*ie*, [34]), we have indirectly alluded to another problem in the way of the Respondent's line of argument, apart from the fact of the upward movement of the property market in 2007 and 2008. This is the issue of the use of the land to its maximum development potential. Take an example of two sites of similar size and development potential but which are being developed to different potentials (see [27] above). Counsel for the Respondent effectively conceded (and, in our view, correctly) that the Chief Assessor would have to look at the *actual* plot density to assess the annual value of both plots even though the developer of one plot might have constructed and utilized a much lower plot density and committed to sell on that basis. This is a natural consequence of the deeming provision (as "vacant land") in s 2(3)(b) of the Act to disregard any building erected thereon or in the course of being erected thereon. The fiction of "vacant land" requires the Chief Assessor to ignore the actual state of use of the land. Instead, its current capital value must be assessed based on its full development potential value and not be limited by its actual use. Any structure on it, whatever its size, will be immaterial. At this juncture, we note the following observation of Jeevan Reddy J in *Union of India v Jalyan Udyog* 1994 (1) SCC 318; AIR 1994 SC 88 (at [18]):

> ... It is well settled that where a fiction is created by a provision of law, the court must give full effect to the fiction… Fiction must be given its due play; there is to be no half-way stop. ...

The principle of reality and rebus sic stantibus

36 We now turn to consider the last argument of the Respondent, *viz*, the principle of reality and *rebus sic stantibus*. We do not see how this averment can be made when the parties had already agreed, as a matter of fact, that the Land was worth much more in 2007 and 2008 than at the time of the pre-sales in 2005. The pre-sales of 2005 can hardly be part of the reality of the circumstances surrounding the Land in 2007 and 2008. Indeed, this is a distortion of reality. The reality would be the market conditions prevailing in those two years. The consequence of accepting the Respondent's contention would be to fix the value of the Land for 2007 and 2008 in accordance with its value in 2005. What the Respondent seeks to do is to tie the hands of the Appellant in assessing the value of the Land in 2007 and 2008 based on its value in 2005 as evidenced by the prices of the pre-sales. We accept the Appellant's argument that the Valuation List is intended to be a nimble document which permits yearly updates to reflect changes in annual value in accordance with prevailing market conditions (see [16] above). To this end, the Appellant is given power under s 20(1) of the Act to amend the Valuation List to take into account changes in land value over the years where "the annual value bears little relationship to the price at which the property changes hands": see *Singapore Parliamentary Debates, Official Report* (30 December 1965) vol 24 at col 775. This simply re-states the uncontroversial rule that land must be valued according to prevailing market conditions *at the time of the valuation and not before*. The developer cannot be permitted to "freeze" the value of the land at a price which follows market conditions *prior to* the date of valuation. In the same vein, say, if a landlord were to rent out a property for a period of five years at a fixed rent (without an escalation clause to vary the rent in accordance with the market conditions), and the rental market had instead moved significantly upwards, the Chief Assessor, in determining the reasonable rent obtainable for the property, is not bound by the actual rent received by the landlord.

Conclusion

37 In the result, we hold that, in the circumstances of this case where the property market had moved significantly between 2005 and 2007/2008, the Appellant did not err, and was indeed entitled to disregard the pre-sales on the proposed development on the Land when assessing, pursuant to s 2(3)(b) of the Act, its value in 2007 and 2008 at the agreed sum of $51,409,000. We accordingly allow the appeal with costs and the usual consequential orders.