

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 181

Originating Summons No 961 of 2017

In the matter of Order 53, Rule 1 of the Rules of Court (Cap 322, Rule 5)

And

In the matter of Sections 40, 39A and 74 of the Stamp Duties Act (Cap 312)

And

In the matter of Section 18 of the Supreme Court of Judicature Act (Cap 322)

And

In the matter of Section 36 of the Interpretation Act (Cap 1)

And

In the matter of an application for leave to apply for judicial review
by Asia Development Pte Ltd

And

In the matter of Stamp Duties (Non-Licensed Housing Developers)
(Remission of ABSD) Rules 2015

Asia Development Pte Ltd

... Applicant

JUDGMENT

[Administrative Law] — [Judicial review] — [Exercise of discretion]
[Revenue Law] — [Stamp duties] — [Remission]

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Re Asia Development Pte Ltd

[2019] SGHC 181

High Court — Originating Summons No 961 of 2017

Choo Han Teck J

11 February, 12 March, 30 April, 16 July 2019

2 August 2019

Judgment reserved.

Choo Han Teck J:

1 The applicant, Asia Development Pte Ltd, was obliged to pay what is known as an “additional buyer’s stamp duty” (“ABSD”) under the Stamp Duties Act (Cap 312, 2006 Rev Ed) (“the Act”) on a property known as 55 Moonstone Lane. The ABSD claimed in this case was a total of \$564,120.00. The applicant applied for a remission of the ABSD on the undertaking that it would complete the development and sale of the property by 5 August 2015.

2 After several appeals for an extension of time, the deadline for the property to be developed was extended by the Commissioner of Stamp Duties (“Commissioner”) to 31 October 2015, but the deadline for the property to be sold remained at 5 August 2015. As neither deadline was met, the Commissioner ordered the payment of the ABSD with interest (amounting to \$577,471.00) by 15 November 2015. The property, which had been developed into two semi-detached houses, was eventually sold around a year after the deadline had expired, on 1 July and 15 August 2016. After the applicant’s sixth

appeal for the ABSD to be remitted back to it was rejected on 23 May 2017, the applicant appealed under the Act and requested that the Commissioner state a case for the appeal in Tax Appeal No 14 of 2017. The Commissioner demurred on the ground that the decision to reject the remission was made by the Minister of Finance.

3 There were two significant events that the applicant says caused it not to be able to complete the development and sale of the property on time. First, the Urban Redevelopment Authority (“URA”) required the applicant to acquire a segment of remnant land adjacent to the property. Second, the applicant had terminated the employment of its project manager on the grounds of corruption.

4 Tax Appeal No 14 of 2017 was stayed after the applicant filed an application for judicial review under this Originating Summons for various orders which can be summarised as follows. First, the applicant asks that the Minister of Finance be directed to reconsider the application for the extension of time for the applicant to develop and sell the property. Second, in so far as the decision not to allow the ABSD to be repaid to the applicant is concerned, the applicant wants a declaration that the decision, having been made by the Chief Tax Policy Officer under the Minister, amounted to an unlawful delegation of duty by the Minister.

5 The above are the main prayers under this Originating Summons. The rest are ancillary to them, even though the applicant is claiming that it was unconscionable to impose the ABSD on a developer when its inability to meet the remission deadline was not caused by its own volition. The applicant thus asks for a refund of the ABSD.

6 The provision for ABSD is set out in s 4(1) of the Act, which is enforced by the Commissioner as an independent body, but in this instance, s 74 of the Act confers a discretionary power on the Minister to impose such conditions as he may think necessary on the reduction or remission of ABSD. I set out below the relevant portions of s 74, namely, s 74(1) and s 74(2B) —

Power to reduce or remit duties

74.—(1) The Minister may, in his discretion and subject to such conditions as he may impose, reduce or remit, prospectively or retrospectively, in the whole or any part of Singapore, the duties with which any instrument or any particular class of instruments, or any of the instruments belonging to such class, or any instrument when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable.

...

(2B) The Minister may, in any particular case, in his discretion and at any time waive in whole or in part any condition imposed under subsection (1).

“Minister” is not defined in the Act, but is defined in s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed) as follows:

“Minister” means the Minister for the time being charged with the responsibility for the department or subject to which the context refers.

7 Discretionary powers differ from duties prescribed under rules in that rules are non-discretionary – they are clear and express mandates that admit only of exceptions that can be found in the rules themselves. A discretionary power leaves in the hand that wields it a latitude to infuse reasons and choices not expressed in any rule. Section 74(1), as can be seen, gives the Minister wide powers relating to the amount of ABSD to be paid, remitted, or waived.

8 A discretionary executive order cannot be set aside unless the applicant can show that the Minister had exercised his discretion wrongfully, usually

where it had been made on the basis of apparent bias or in failing to provide a fair hearing. In the present case, neither of these grounds are relevant. The applicant's submission that he was entitled to a right of hearing before his claim was rejected by the Minister is misconceived, especially on his own case that the Minister has to determine each application himself. In cases where a tribunal has the power to exercise its discretion, the challenge would generally be based on the ground of apparent bias. In the applicant's case, there is no basis to hold that the discretionary power under s 74(1) is to be exercised in a hearing in which the requirement of *audi alteram partem* (listening to the other side) rule applies. Here, the Act confers an absolute discretion upon the Minister, and it was the applicant who was applying for the decision to be reconsidered. He cannot be placed in a better position than what his original right provides for, namely, to apply for a remission.

9 The first argument advanced by Mr Mohamed Ibrahim, counsel for the applicant, was that the decision not to remit the ABSD was based on matters which the applicant had no control over. These are the matters referred to in paragraph 3 above.

10 The provisions applicable in this case are fiscal in nature and are not regulatory or punitive. There is no provision that an applicant is entitled to a remission of the ABSD as of right if the conditions imposed could not be met because of circumstances beyond his control. The applicant is not being punished because the conditions imposed were not met. Furthermore, Mr Khoo Boo Jin, for the Attorney-General, had satisfied me that the applicant had not been factually correct when he claimed that the requirement by the URA for the acquisition of the remnant land caused a delay of 12 months and 9 days. It turned out that the applicant had also failed to obtain the necessary permits from the Building and Construction Authority to carry out the works earlier. So, contrary

to the claim that the delay was caused by events beyond his control (which would not have helped his case in any event), it was caused partly by the applicant himself.

11 For the efficient application of the ABSD remission requirement, the authorities only require that the property be developed and sold within the deadline given. In this case, an extension of the deadline relating to the development had been granted, but the deadline for the sale, which can be complied with independently of the development of the property, was not. The time imposed by the minister is within the discretion conferred on him by Parliament, and his refusal to extend the deadline cannot be construed as an unreasonable or wrong exercise of the minister's discretion. Adapting an illustration by Bruce Cannon Gibney, the author of *The Nonsense Factory*, if a person is given the discretion to order a steak, he is entitled to order a porterhouse and not a tenderloin. That is the nature of a discretionary power.

12 The second argument advanced by Mr Ibrahim was that s 74(1) of the Act conferred the powers there upon the Minister, and that power cannot be delegated by the Minister to a subordinate. Counsel referred to several cases, notably, *Re Golden Chemical Products* [1976] 2 All ER 543, and *AG of Quebec v Carrières Ste. Thérèse Ltée* [1985] 1 SCR 831. Relying on these cases, Mr Ibrahim submits that where it is clear in the context, a power granted to a Minister must be exercised by that Minister personally. In the latter case, the legislation in question specifically states that the power may be exercised by the "Minister... himself". Section 74(1) of the Act does not. It is also clear to me that the context of this case does not suggest that the discretion to impose conditions and remit the ABSD are decisions that the Minister must make personally. These are clearly executions of an administrative power that is conferred upon the Minister as representing the ministry in charge. I am also of

the opinion that context in a case like this must include the nature of the administrative and executive functions of the jurisdiction in question, and the cases cited by Mr Ibrahim concern such functions from foreign jurisdictions. Mr Khoo referred to the more pertinent case of *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 (“*Carltona*”) for the proposition that a reference to powers conferred on a Minister may be exercised by officials in the ministry of that Minister.

13 Half a century ago, we were a fledgling common law jurisdiction with scant local cases to follow in keeping faith with the doctrine of *stare decisis*, which, as a doctrine, requires a court to be bound by a higher court within the same jurisdiction. Foreign judgments, English cases included, were strictly not binding but regarded as persuasive authority. In present times, law and culture across the common law world have changed and require courts to be careful in accepting judicial pronouncements from other jurisdictions. Despite this, the words of Lord Greene in *Carltona* ring out with even greater force today, with government burgeoning in size and responsibilities. The learned judge in that case held at p 563:

In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual ministries. It cannot be supposed that this regulation meant that, in each case, the minister in person should direct his mind to the matter. The duties imposed upon ministers and the powers given to ministers are normally exercised under the authority of the ministers by responsible officials of the department.

14 I am satisfied from the affidavit filed by the Chief Tax Policy Officer, Miss Doreen Tan, that she has the seniority and power to decide whether an

extension of time should be granted for the applicant to develop and sell the property. She was also entitled to determine whether the ABSD ought to be remitted in the circumstances of the applicant's case. All these matters are part of the work of the ministry of the Minister in charge. It is not reasonable to interpret s 74(1) as directing the Minister himself to study each application on the merits, but, of course, he must take the responsibility of the acts of his officers in the discharge of such duties.

15 In the circumstances, the discretion of the Minister not to grant a further extension of time is, therefore, not justiciable on the ground advanced by Mr Ibrahim. That being the case, the discretion not to remit on the ground that the condition imposed had not been met is also not justiciable.

16 For these reasons, the application fails and is dismissed. I will hear parties on costs at a later date.

- Sgd -
Choo Han Teck
Judge

Mohamed Ibrahim s/o Mohamed Yakub (Achievers LLC) for the
Applicant;
Khoo Boo Jin, Louis Ng Shi Zheng, Ailene Chou XiuJue, Kelvin
Chong Yue Hua and Yeo Gek Min (Attorney-General's Chambers)
for Ministry of Finance;
Afzal Ali (Allen & Gledhill LLP) on watching brief for Inland
Revenue Authority of Singapore.