IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 67

Civil Appeal No 130 of 2019 and Civil Appeal Summons No 36 of 2020

Between

YCH Distripark Pte Ltd

… *Applicant / Appellant*

And

The Collector of Land Revenue

… *Respondent*

In the matter of AB 2012.036

Between

YCH Distripark Pte Ltd

… *Appellant*

And

The Collector of Land Revenue

… *Respondent*

EX TEMPORE JUDGMENT

[Land] — [Compulsory acquisitions] — [Compensation payable]
[Civil Procedure] — [Appeals] — [Adducing fresh evidence on appeal]

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v
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Andrew Phang Boon Leong JA, Judith Prakash JA and Woo Bih Li J
14 July 2020

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

Introduction

1 Having carefully considered the parties' written as well as oral submissions, we dismiss Civil Appeal No 130 of 2019 ("CA 130") and Civil Appeal Summons No 36 of 2020 ("SUM 36").

2 By way of background, the Appellant, YCH Distripark Pte Ltd ("YCH") was the sub-lessee of a piece of property located at 30 Tuas Road, Singapore ("the Property") under a ten-year lease commencing from 25 July 2006. A declaration was issued on 5 January 2011 ("the First Declaration") under s 5 of the Land Acquisition Act (Cap 152, 1985 Rev Ed) ("the Land Acquisition Act") and published in the *Gazette* on 11 January 2011 ("the First Gazette Date") to acquire part of the Property. Following discussions relating to difficulties posed

by the partial acquisition of the Property, the Collector of Land Revenue ("the Collector"), who is the Respondent in this appeal, agreed to acquire the whole of the Property. To this end, a second declaration was issued on 30 December 2011 ("the Second Declaration") and published in the *Gazette* on 8 February 2012 ("the Second Gazette Date").

3 The Collector awarded YCH compensation for relocation expenses and the depreciated value of its Automated Storage and Retrieval System ("ASRS"), a specialised system for automated storage and retrieval of pallets. The Collector did not, however, award compensation for YCH's lease interest in the Property.

4 YCH appealed the Collector's decision to the Appeals Board, which agreed with the Collector that the lease interest should be valued as at the Second Gazette Date. The Appeals Board found that the lease interest should be valued by determining whether a profit rent accrued to YCH; this entailed deducting the lease rent from the market rent. As the lease rent was found to be greater than the market rent at the time, the lease interest was without value as at the Second Gazette Date. The present appeal concerns the profit rent claimed. YCH did not pursue its claim for a separate award in respect of the loss of 95 heavy vehicle parking lots.

5 There are there main issues in this appeal:

(a) First, whether YCH's lease interest in the Property should have been valued as at the First Gazette Date or as at the Second Gazette Date;

(b) Second, whether the lease rent should be determined using the actual gross floor area ("GFA") of the Property, or its "Market GFA".

(c) Third, whether the Appeals Board erred in its determination of the Property's market rent.

CA 130 of 2019

Relevant date for valuation of lease interest

6 In our view, the Appeals Board rightly found the date for valuing YCH's lease interest in the Property to be the Second Gazette Date. This is so notwithstanding the fact that the Appeals Board erroneously applied the 2016 version of the Land Acquisition Act.

7 YCH raises a total of five arguments in support of its case that the relevant date for valuing its lease interest in the Property is that of the First Gazette Date:

(a) first, s 49 of the 2010 Land Acquisition Act (which is the correct version) does not require a fresh statutory notification for further acquisition of impaired land;

(b) second, there are Indian authorities establishing that where there are two statutory notifications issued to acquire land, the market value is to be assessed at the date of the first notification;

(c) third, the use of the First Gazette Date is correct as a matter of Parliamentary intent as it is the date on which detriment first accrued to YCH due to the severance of its land;

(d) fourth, the use of any date other than that of the First Gazette Date would render mechanisms under the 2010 Land Acquisition Act open to abuse; and

(e) fifth, such an interpretation would allow s 49 and s 50 of the 2010 Land Acquisition Act to be read consistently.

8 We do not find these arguments to be persuasive. In our view, the relevant date for the purposes of valuing YCH's lease interest in the Property is that of the Second Gazette Date. Under the 2010 Land Acquisition Act, the government's right to compulsorily acquire land is rooted in a declaration issued pursuant to s 5 which identifies the land to be acquired. It is not disputed between the parties that the Second Declaration was the only declaration which accurately described the property eventually acquired by the government.

9 Even if we were to accept that s 49 of the 2010 Land Acquisition Act applies, we do not think that the acquisition of the Property could have been carried out without a second declaration accurately identifying the land to be acquired. In this regard, the decision in *Bhagwandas Nagindas v Special Land Acquisition Officer* AIR 1915 Bom 15, which held that a subsequent acquisition under the Indian Land Acquisition Act's equivalent of s 49 required a further declaration, better accords with the acquisition framework set out in the Act. The decision in *Saraswathi Printing Works v State of Mysore* AIR 1974 Kant 125, on the other hand, contains no justification for its finding that no further declaration was required other than a reference to the Indian Supreme Court's decision in *State of Bihar v Kundan Singh* AIR 1964 SC 350, which actually does not lend any support to such a position.

10 We are of the view that the decision of the Judicial Committee of the Privy Council (on appeal from the High Court of Judicature at Rangoon) in *Ma Sin and Ors v Collector of Rangoon* AIR 1929 PC 126, [1929] UKPC 15 ("*Ma Sin*") is applicable to the present case. In *Ma Sin*, an initial declaration to acquire a parcel of land was followed by a second declaration purportedly cancelling

the first declaration and reducing the size of the land to be acquired. The Privy Council found that the clear words of the second declaration had the effect of cancelling the first declaration, and that the date of the second declaration would be the operative date for valuing the acquired land. We do not think that it makes a difference that the Second Declaration did not expressly state that it cancelled the First Declaration, or that it enlarged rather than reduced the size of the acquired land. It was implicit in the nature of the Second Declaration that it superseded the First Declaration. After all, the former covered both the land that was already slated to be acquired under the First Declaration (but the government had yet to take possession of) and land that was not included in the First Declaration. The letter dated 4 January 2012 sent by the Collector to YCH similarly evinced an intention that the Second Declaration would be the basis on which the entire Property would be acquired. Notably, s 23(1) of the Indian Land Acquisition Act as it then stood set the date for the valuation of the acquired land as "the date of the publication of the declaration relating thereto under section 6". This is similar to the regime in s 33 of the 2010 Land Acquisition Act, which places the primary focus on the date of the declaration under s 5 for the purposes of valuing acquired land.

11 We do not think that the decisions of *Collector, Hanthawaddy v Sulaiman Adamjee* AIR 1941 Rang 225 and *State of West Bengal v Bhutnath Chatterjee* AIR 1965 Cal 620 assist YCH. Both of these decisions post-dated the amendments to s 23(1) of the Indian Land Acquisition Act in Act XXXVII of 1923, which changed the relevant date for valuation to "the date of the publication of the notification under section 4, subsection (1)". This would be the equivalent of valuing acquired land on the date of the notification under s 3(1) of the 2010 Land Acquisition Act, which is only permitted by s 33 of the 2010 Land Acquisition Act in the limited scenario that such a notification is

indeed issued and followed within six months by a s 5 declaration in respect of the *same* land. The dissimilarities between s 23 of the post-amendment Indian Land Acquisition Act and s 33 of the 2010 Land Acquisition Act limit the applicability of these authorities in ascertaining the relevant valuation date for the Property.

12 We are not persuaded by YCH's remaining arguments. There is nothing in the Parliamentary debates which would suggest that the operative date for valuation be that of the First Gazette Date. While YCH submits that this was the date on which it became publicly known that the Property was going to be acquired, this is not entirely accurate. The First Declaration only made clear that a *portion* of the Property was to be acquired, it was not until the Second Declaration that it became public knowledge that the *entire* Property would be acquired. At its highest, this argument is neutral as to the determination of the relevant date for valuation.

13 As for the possibility of the valuation date being open to abuse, it is not entirely clear to us how this would be possible. The main thrust of YCH's argument appears to be that adopting the Second Gazette Date would allow the Collector to reduce compensation payable by delaying the issuance of a second statutory declaration. In our view, adopting the First Gazette Date would not be free of similar concerns. It could equally well be argued that the Collector could just as easily lodge pre-emptive declarations when land prices are low to preserve favourable prices for future acquisitions when the need arises. Seen in this light, this argument is similarly neutral as to the relevant date for valuation.

14 Finally, we do not think that the interpretation to be accorded to s 50 of the 2010 Land Acquisition Act has any bearing on the present appeal. While the government may have had the authority to acquire the Property without a further

declaration by invoking s 50, this was not what occurred on the facts of the case. The Second Declaration was issued under s 5 of the 2010 Land Acquisition Act to acquire the whole of the Property, and there is no question that this was authorised under the Act.

15 In the circumstances, we find that the Appeals Board was correct in valuing YCH's lease interest in the Property as at the Second Gazette Date. This is so notwithstanding the fact that it erroneously applied the wrong version of the Land Acquisition Act.

Whether lease rent should be calculated on the basis of "Market GFA"

16 The next issue concerns whether the Appeals Board was correct in calculating lease rent on the basis of actual GFA and in our judgment it was. YCH argues that the "Market GFA" method should be adopted to add three notional floors to its ASRS warehouse building because of the effective storage capacity arising from its system, and thereby increase the size of the Property for the purposes of calculating lease rent. This is because YCH had constructed a warehouse, referred to as Block 7, which had a high ceiling which could have, but did not, incorporate three additional floors. The "Market GFA" would lead to a lower lease rent, which is determined by dividing the total costs in leasing the Property by its size. YCH argues that the "Market GFA" method is one which has been adopted in other proceedings under the 2010 Land Acquisition Act, and also reflects the price at which a willing vendor is willing to sell to a willing purchaser.

17 We do not think that there is any authority supporting the adoption of the "Market GFA" method as proposed by YCH. In all of the cases cited to this court purporting to apply the "Market GFA" method, it was used to calculate

the GFA of an existing second or higher floor of a multi-storey building, and not to add notional floors to a building where none existed.

18 As for YCH's argument that the "Market GFA" method reflects the price at which a willing vendor is willing to sell to a willing purchaser, we do not see how this logically supports its contention that Block 7 should be treated as having four stories, when it in reality only has one. More significantly, as was noted by the Appeals Board, there is no evidence that the "Market GFA" approach has ever been adopted in the context of a lease of property in the same circumstances. Indeed, YCH's own expert witness conceded in the proceedings below that there was no such market practice. Nor could YCH produce evidence of any other rental quotation calculated on the basis of "Market GFA". The actual lease of the Property was also calculated on the basis of actual GFA. This does not mean that the high ceiling of Block 7 is irrelevant. It should be taken into account in determining the market rent and the Appeals Board correctly proceeded to do this but inadvertently omitted to factor it into its calculations as we elaborate later.

Whether the Appeals Board erred in its determination of the Property's market rent

19 The final issue pertains to whether the Appeals Board correctly determined the Property's market rent through the adoption of various adjustments to the comparables put forth by YCH's expert witnesses. We are of the view that there is no basis to disturb the Appeals Board's decision. YCH argues that the Appeals Board erred in adopting a large number of adjustments to its expert witnesses' comparables based on the evidence of the Collector's expert witness. YCH focusses on two sets of adjustments in particular: (a) first,

the adjustments made on account of size differences; and (b) second, adjustments made for differences in ceiling height.

20 As a starting point, we do not think that the authorities cited by YCH go so far as to establish a general prohibition against the use of multiple adjustments to comparables in determining the market rent of property. Much would depend on the precise factual matrix before the court. Where, for example, the property in question is unique with a lack of closely situated comparables, we do not think that there is anything objectionable in the use of multiple adjustments to determine the property's market rent, so long as cogent reasons are proffered for the adopted adjustments. The alternative, which is to utilise dissimilar comparables without adjustment to ascertain a property's market rent, appears to us to be the less desirable approach. The present appeal appears to be such a case as the Property was, by all accounts, unusually large. The comparables put forth by the expert witnesses on both sides were all substantially smaller than the Property, with the largest comparable property on YCH's side being slightly less than ten times smaller based on actual GFA. With this in mind, we now turn to the Appeals Board's reasons for adopting the adjustments which it did.

21 In our judgment, the Appeals Board was entitled to make the adjustments that it did to account for the size differences between the comparables put forth by YCH's expert witnesses and the Property. The Collector's expert witness's evidence was that larger properties generally commanded lower rents on a price per square foot or per square metre basis, and that a rule-of-thumb adjustment factor of 10% would normally be applied for every doubling in GFA. As against this, YCH's expert witnesses opined that no adjustments should be made due to the rarity of the Property, and that, if anything, a premium should be ascribed to the Property. The Appeals Board

rejected the evidence of YCH's expert witnesses as being speculative and unsupported by any authority. Having considered the evidence, we do not see any reason to doubt its reasoning.

22 The second set of adjustments relate to the differences in ceiling height. The Appeals Board found that a 5% upward adjustment should be made to properties with ceiling heights lower than the Property. The difficulty, however, was that it omitted to include this adjustment in its final calculation of market rent. We do not think that any prejudice was caused by this omission as the re-calculated market rent taking into account this adjustment would be $1.16 per sqf/month. This would still be lower than the lease rent, which was calculated to be $1.20 per sqf/month.

23 In so far as YCH suggests that the Appeals Board's oversight in failing to include the adjustment for height in its final calculation of market rent casts doubt on the other adjustments it applied, we are unable to accept this argument. The Appeals Board thoroughly explained its reasons for the remaining adjustments applied to the comparables put forth by YCH's expert witnesses in determining the Property's market rent. YCH did not make any attempt to demonstrate how the adjustments for age, location and provision of heavy vehicle lots were erroneous. We have not been given any basis on which to question the Appeals Board's reasoning on these adjustments and thus affirm its findings on the Property's market rent.

Summons 36 of 2020

24 At this juncture, we briefly set out our reasons for disallowing the application in SUM 36 to adduce further evidence in the form of three letters from Jurong Town Corporation ("JTC"), the head lessor of the Property, dating

from 2001 to 2003. In this correspondence, JTC agreed to treat the ASRS warehouse on the Property as having three floors and other buildings with ceiling heights above 12m as having two floors for the purposes of calculating the Property's plot ratio.

25 Following the approach set out by this court in *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341, we are of the view that the *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") test applied in its strict form as the hearing before the Appeals Board bore all the characteristics of a trial. The evidence sought to be adduced plainly did not satisfy the criteria of non-availability as the letters had been in YCH's possession from the outset; the fact that YCH might not have foreseen their relevance at the time could not justify their admission on appeal. We also do not think that the evidence satisfied the criteria of relevance as they related solely to the calculation of the Property's plot ratio, and did not appear to have any bearing on the calculation of YCH's lease interest in the Property. Given that there are no exceptional reasons to admit the evidence notwithstanding the non-compliance of the *Ladd v Marshall* conditions, we dismiss the application in SUM 36.

Conclusion

26 For the above reasons, we dismiss CA 130 and SUM 36. We will hear parties on costs.

Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal	Woo Bih Li Judge

Nish Kumar Shetty, Krishna Elan, Lua Jing Ing Priscilla and Tan Tian Yi (Cavenagh Law LLP) (instructed), and Loh Tian Kai (Clifford Chance Pte Ltd) for the appellant;
Jeyendran s/o Jeyapal, Tang Shangjun, Evans Ng and Lim Wei Wen Gordon (Attorney-General's Chambers) for the respondent.
