Privy Council Appeal No. 12 of 1989

Chew Ming Teck *Appellant*

v.

(1) Collector of Land Revenue and
(2) Trustees of the Estate of Syed Mohamed Bin Ahmed Alsagoff *Respondents*

FROM

THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST MARCH 1991

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD TEMPLEMAN
LORD GRIFFITHS
LORD GOFF OF CHIEVELEY
LORD LOWRY

*[Delivered by **Lord Goff of Chieveley**]*

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[14] The second respondents ("the trustees") are the trustees of the estate of Syed Mohammed bin Ahmed Alsagoff. The trustees are the leaseholders, for the unexpired period of 999 years, commencing in 1890, of a substantial plot of land ("the land") fronting on Orchard Road in Singapore, the freeholder being the estate of Edwin Koek. On the land there are some two storey semi-permanent shophouses in a poor state of repair, which are occupied and are subject to the Control of Rent Act (cap. 58). Orchard Road is however an important commercial centre in Singapore, and the trustees regarded it as ripe for development. Accordingly on 15th June 1968 the trustees entered into an agreement in the nature of a building sub-lease with the appellant, Chew Ming Teck, who is a developer. Under the agreement, the trustees demised the land to the appellant, subject to the rights of the occupiers of the shophouses on the land, for a period of five years (with an option to the appellant to extend that period for a further four years), the appellant covenanting (1) to pay to the trustees an annual premium of $15,300.63; (2) to negotiate, settle and pay compensation (at his expense) to the occupiers of the shophouses, with a view to obtaining vacant possession of them; and (3) to

pay all rates, taxes etc. on the land during the period of the lease. If the appellant successfully obtained vacant possession of the whole of the land, he was bound immediately to remove the existing buildings and works on the land, and to erect a multi-storey building of a certain specification upon it. Upon completion of the new building, the trustees were bound to grant to the appellant a lease for a term of thirty years upon terms set out in a schedule to the agreement, which provided (*inter alia*) that the appellant had the option to extend that term for two further periods of thirty years each. If the appellant failed to obtain the requisite planning and other consents to enable the development to take place, the appellant was entitled to determine the lease so granted to him.

On 18th July 1968, the appellant's architects submitted an application for planning approval for a twelve storey shopping/hotel building with a car park; and on 17th September 1968 he paid a security deposit of $106,000 to the Chief Building Surveyor. Following discussions with the planning authorities, a revised scheme was submitted on 7th July 1969 for an eight storey shopping centre/office building with a car park. However on 21st October 1969 the appellant was informed that planning approval for the proposed development was refused on the ground that "the site is affected by a redevelopment scheme for the area". The appellant filed an appeal against this decision. In response, the Chief Building Surveyor submitted a written statement in which it was stated that the reason for refusal was based on the fact that the site was likely to be acquired for development by the Urban Redevelopment Department. The statement continued:-

> "... as far as planning/technical requirements are concerned, the proposed site is within the main shopping zone of the master plan, and therefore, there will be no particular objection to the development of the site for a shopping centre/office building. With regard to other technical requirements, like plot ratio, car parks, the applicant has taken these into account."

However on 24th June 1970, the government gazetted a declaration for the acquisition of the land. The appellant's appeal was heard on 6th October 1970 and dismissed on 28th October 1970. His deposit was returned. Objections made earlier by him to the acquisition of the land, in which he pointed out that his proposed development was similar to that now proposed by the Urban Redevelopment Department, had also been rejected.

Meanwhile, by letters dated 20th August and 8th September 1970, the Collector of Land Revenue ("the Collector"), who is the first respondent in the present appeal, invited claims for compensation from the

trustees and the appellant under the provisions of the Land Acquisition Act 1966. It is necessary now to set out the most relevant provisions of the Act.

When land is compulsorily acquired in Singapore, the Collector is required to give notice that claims to compensation for all interests in the land may be made to him. By section 8(3) of the Act, such notice:-

> "(a) shall state the particulars of the land; and
>
> (b) shall require all persons interested in such land -
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> (i) to appear personally or by any person authorised in writing in that behalf before the Collector at the time and place mentioned in such notice, such time not being earlier than twenty-one days after the date of the notice; and
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> (ii) to state the nature of their respective interests in the land, the amount and particulars of their claims to compensation for those interests, the basis or mode of valuation by which the amount claimed is arrived at, and their objections, if any, to the measurements made under section 7."

The measurements so referred to are measurements made by the Collector of the land.

Thereafter under section 10(1) the Collector shall proceed on the appointed day to enquire (*inter alia*):-

> "Into the value of the land and into the respective interests of the persons claiming the compensation, and shall, as soon as possible after the conclusion of the enquiry, make an award under his hand of -
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> (a) the area of the land;
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> (b) the compensation which in his opinion should be allowed for the said land;
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> (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether or not they have respectively appeared before him."

Section 15 provides that, in determining the amount of compensation, the Collector shall take into consideration the matters mentioned in section 33 of the Act and shall not take into consideration the matters mentioned in section 34. For present purposes, it is relevant to observe that the matters mentioned in section 33 show that compensation is to be based essentially on the market value of the land at the

relevant date; and that loss of earnings is referred to only in section 33(1)(d) which refers to:-

> "(d) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings."

Provision is made in Part III of the Act for appeals in respect of awards made by the Collector. For that purpose, one or more Appeal Boards are constituted, consisting of a Commissioner of Appeals or a Deputy Commissioner of Appeals, either sitting alone or with two assessors. Any person interested, who is aggrieved by an award by the Collector, may lodge a notice of appeal; this is then sent to the Collector, who must thereupon lodge with the Registrar of the Board his grounds of award. After the hearing of an appeal, the Board has power (under section 27(3) of the Act) to confirm, reduce, increase or annul the award or to make such order thereon as may seem fit. Provision is made (in section 29) that, where the amount of the award exceeds $5000, the appellant or the Collector may appeal to the Appellate Court from the decision of the Board upon any question of law; and (under section 30(1)) the Board may state a case on a question of law for the opinion of the Appellate Court. Section 38(1) provides that, when the amount of compensation has been settled and there is any dispute as to the apportionment thereof, the Commissioner sitting alone shall decide the proportions in which the persons interested are entitled to share in such amounts; and by section 38(2) an appeal shall lie from such decision to the Appellate Court.

The notice given by the Collector to the trustees and to the appellant was made in accordance with section 8(3) of the Act. There followed correspondence between the Collector and solicitors acting for the appellant. The appellant's solicitors first submitted a claim for compensation which consisted of items of wasted expenditure, and also a claim for loss of profit in the sum of $500,000 per annum for a period of six years. Following requests by the Collector for further particulars, the appellant's solicitors on 16th November 1970 gave particulars of how the sum of $500,000 per annum was ascertained, again claiming that sum as loss of income over a period of six years. It was further stated that, if planning approval had been given in December 1969, the building could have been completed by June 1971 and the rental income would have been received as from July 1971. Meanwhile on 14th August 1970 the trustees had submitted a valuation of the land in the sum of $573,400.

Over three years later, on 11th March 1974, the Collector made his award, in which he assessed the compensation to be allowed for the land at $511,650. He failed however to apportion that sum between the three interested parties, viz. the freeholder, the trustees and the appellant. On 16th and 21st March 1974 respectively the appellant and the trustees gave notice of appeal against the award. Over two years later, on 5th April 1976, the Collector published the grounds of his award; once again, there was no reference to apportionment. Thereafter, over a year later, on 6th June 1977, the Collector issued a fresh award, in which he once again assessed the compensation to be allowed for the land at $511,650, and he apportioned the compensation as follows: the freeholder, $1; the trustees, $511,648; and the appellant, $1. Fresh notices of appeal were given by the trustees and the appellant on 14th June 1977. On 1st October 1977, the Collector published the grounds for his second award. On 23rd April 1978 the Collector issued a supplementary award, increasing the amount of compensation for the land to $550,000, but not increasing the amounts apportioned either to the freeholder or to the appellant.

In the grounds for his award dated 1st October 1977, the Collector referred to the appellant's claim as advanced by his solicitors, and then stated as follows:-

"8. At the date of the acquisition Chew Ming Teck had not for two of the five years initially provided by the Sub-Lease done anything towards fulfilling the obligations undertaken by him as follows:-

(i) the tenants notwithstanding the Sub-Lease continued to pay their rents to the Trustees.

(ii) Chew Ming Teck has never paid the annual premiums of $15,300.63 to the Trustees as provided by Clause 2(a) of the Sub-Lease.

(iii) Chew Ming Teck has never paid the property tax and other payments as provided by Clause 2(c) of the Sub-Lease.

9. I am satisfied that no legal estate in the subject land passed to Chew Ming Teck and that he had not entered upon the lease i.e. gone into possession. I regard the sub-lease dated the 5th April 1968 as no more than an agreement to enter into a 30 year lease provided Chew Ming Teck fulfilled the obligations he had undertaken to perform by the sub-lease.

10. The claim of $500,000/- for 6 years is based principally on the realizable potential of the land. I find it difficult to reconcile this with

the Trustee's claim as there is no connection between the claim which works out to $3 million and the value of the land taking into account its realizable potential. Furthermore no valuation report was submitted by Chew Ming Teck. However, the Trustees did and their valuer valued the land taking into account its realizable potential at $25/- psf or $573,400/-.

11. In reality Chew Ming Teck's claim is a claim for loss of profit and this is how it is set out in Loganathan's letter of the 18th September 1970. If this is so then Chew Ming Teck's claim is insupportable as it does not come under any of the provisions of Section 33 before it was amended by Act 66 of 1973. ... except perhaps Section 33(1)(d) before the amendment, but loss of profit in a non-existent business is not loss of actual earnings. I regard Chew Ming Teck's claim as being speculative.

12. In view of the above, Chew Ming Teck's interest in the compensation to be made on account of the acquisition is nil and thus the apportionment of $1/- supportable. The Collector realising that the Award dated the 11th March 1974 was defective then proceeded to issue a fresh Award on 6th June 1977 and the Award contained an apportionment as follows:-

(i)	To the freeholder	- $1/-
(ii)	To the Trustees	- $511,648/-
(iii)	To Chew Ming Teck	- $1/-"

On receipt of these grounds, the appellant considered the matter with his legal advisers. He considered that there were serious errors in the grounds of award, and further that it was in the circumstances perverse to award only $1 in respect of his interest in the land. The appellant had of course his right to appeal to the Board under the Act, a right which he had preserved by giving the requisite notice of appeal; and at the appeal it would be open to the Board to reconsider the award and to confirm, vary or annul it. However, nearly eight years had already passed since the compulsory acquisition of the land. Furthermore a rehearing would be a time-consuming and expensive affair, involving a hearing before the Board over a number of days and the presentation of evidence by two or three experts. After consultation with those advising the Collector and the trustees, it was decided that the Board should first be invited to decide certain preliminary issues. These were as follows:-

"(a) whether the Collector after having made the apportionment referred to in paragraph 7 has any further contentious or other interest in the preliminary issue next hereinafter mentioned;

(b) whether on the facts hereinbefore stated the Collector was incorrect in law to have concluded that the said Chew Ming Teck's interest in the Property is a nominal value worth only $1/-;

(c) if the decision is in the affirmative and especially having regard to the submissions as stated in paragraphs 14 and 15, should not the said Chew Ming Teck be compensated, as a consequence of the said acquisition, for the value of the lease and also the resulting loss in profits as a consequence of the said Acquisition;

(d) if the decision is in the affirmative the basis of the valuation be declared to be for a 93 year lease (alternatively for a 33 year or 63 year lease);

(e) if again (d) is in the affirmative that the value of the said interest be adjourned for argument; and

(f) costs be provided for."

In the end, it was decided to invite the Board first to deal only with issues (a) and (b). The hope and expectation of those advising the appellant was that, if he was successful on issue (b), the effect would be to get the Collector's award out of the way; and then, subject to the outstanding appeal of the trustees in respect of the valuation of the land, the question of apportionment as between the appellant and the trustees could be dealt with by negotiations between them, thereby saving much time and expense.

Things did not however work out that way. The hearing took place before the Board, consisting of the Commissioner, on 13th and 14th July 1981. Affidavit evidence was admitted on behalf of both the Collector and the appellant, it being understood that the award was being challenged as being erroneous on issues both of fact and law. At the conclusion of the hearing, the Commissioner made the following order:-

"Rule that Chew Ming Teck's interest in the land and compensation is nominal, and that $1 given is correct. Rule that the Collector has locus standi in these proceedings."

Costs were awarded against the appellant. The Commissioner gave no reasons for his decision. The appellant, wishing to take the matter further, asked for reasons; but none were forthcoming. In the end,

the Commissioner was invited to state a case for the opinion of the Court of Appeal, and a case stated was prepared by those acting for the parties and submitted to the Commissioner for his signature. He ultimately signed the case on 23rd February 1988, over seventeen years after the compulsory acquisition of the land.

The matter came before the Court of Appeal on 14th November 1988. On 1st December 1988 the Court of Appeal gave judgment, concluding that the decision of the Board was correct. It is against that decision that the appellant now appeals. The question of the locus standi of the Collector, having been resolved in the Collector's favour in the courts below, is no longer in issue.

Before the Commissioner, and again before the Court of Appeal, the contentions of the appellant were as follows. He contended that the Collector's apportionment of $1 to him was based on the following material errors of fact and law:-

(1) That planning permission for the proposed development had been refused, whereas the evidence showed that but for the compulsory acquisition planning permission would have been granted.

(2) That the appellant had not paid the annual premium for the lease, or the property tax; whereas in fact the appellant had an agreement with the trustees whereby they continued to collect and retain the rents from the property and pay the property tax, in lieu of receiving the annual premiums.

(3) That there had been no negotiations with the occupying tenants for vacant possession, whereas in fact the appellant and the trustees had made preparations for obtaining vacant possession, but further negotiation had been rendered abortive by the compulsory acquisition.

(4) That there was only a period of five years available to the appellant for obtaining vacant possession and taking other steps with a view to development, whereas in fact there was available a period of five years plus an option for a further four years, which was amply sufficient.

(5) That none of the buildings on the site had been pulled down and that the appellant had not sought permission to pull them down; whereas such steps are only taken after planning permission has been obtained, and here planning permission was refused only because of the compulsory acquisition.

(6) That the appellant had no legal estate in the land, whereas the appellant had a legal interest in the land, viz. the sub-lease from the trustees, which had been duly registered.

Of these matters, those in paragraphs (2), (4) and (6) were derived from the Collector's grounds of award; and those in paragraphs (1), (3) and (5) were derived from the Collector's affidavit evidence before the Commissioner.

For the trustees and the Collector, the following submissions were advanced:-

(1) The sub-lease itself was of no value, because the annual premium and the taxes payable on the property were roughly equal to the rental income from the shophouses on the land.

(2) The appellant had not made a claim to compensation based on market value, but only on the basis of loss of future income which was not an appropriate basis for valuation under section 33 of the Act. In any event, the appellant had not proved that he would have earned the profits which he claimed to have lost.

(3) As to the appellant's submissions, the Collector did not take into account the matter referred to in paragraph (1) of the appellant's submissions; he did take into account the matters in the remaining five paragraphs, but those in (2), (4) and (6), though incorrect, were immaterial, and those in (3) and (5) were in fact true.

(4) The simple fact was that the appellant had not taken a single step (except the failed planning application) in two years towards compliance with the necessary conditions in the lease.

In response to the argument that the appellant had not made a claim based on market value, the appellant said that he did make a claim based on market value, and that it was accepted as such by the Collector, but that that was irrelevant to the proceedings which were not directed towards the valuation of the appellant's interest but to whether the Collector's award was vitiated by errors of fact and law.

The Court of Appeal upheld the submissions of the trustees and the Collector.

Their Lordships approach the matter as follows. They turn to the Collector's grounds for his second award dated 1st October 1977. In paragraph 11, the Collector treated the appellant's claim as being a claim for loss of profit. With this, their Lordships agree. But the Collector did not reject the claim altogether as inadmissible. He treated the claim for loss of profit as speculative; but he nevertheless proceeded to value the appellant's interest. He valued it at nil and then apportioned to him a nominal sum of $1. As is indicated by the opening words of paragraph 12, viz.

"In view of the above", this conclusion was founded upon the preceding paragraphs of the grounds for his award. These paragraphs included not only paragraphs 10 and 11, in which he criticised the form in which the appellant made his claim, and found it difficult to reconcile the amount of the appellant's claim for loss of profits with the valuation placed by the trustees on the land as a whole. They included also earlier paragraphs, in which the Collector made observations about the appellant's interest in the land, and the alleged failure by him to fulfil his obligations under the sub-lease. In paragraph 8 he asserted that the appellant had not for two of the five years initially provided by the sub-lease done anything towards fulfilling his obligations undertaken by him as regards collecting rent from the tenants in occupation, paying the annual premiums, and paying the property tax on the land; all of these criticisms were in fact erroneous. In paragraph 9 he expressed himself satisfied that no legal estate in the land passed to the appellant, a conclusion which was erroneous in law.

Their Lordships are unable to dismiss these various paragraphs in the grounds for the award as immaterial. On the contrary, they must have been included for some purpose; and their Lordships consider it plain that they were included because the Collector considered that they detracted from the appellant's claim that he was entitled to compensation in respect of his interest in the land, and that the Collector took them into account when reaching his conclusion that he should value the appellant's interest at nil. From this it must follow, in the opinion of their Lordships, that quite apart from the points made by the appellant founded upon the statements in the Collector's affidavit evidence before the Board, the Collector erred in law and in fact in concluding that the appellant's interest in the land was nominal only and that his interest should therefore be apportioned at $1. Their Lordships wish however to add that, in his affidavit, the Collector chose to rely upon the absence of negotiations by the appellant with the tenants on the land and the further fact that none of the buildings situate on the land had been pulled down nor permission sought to pull them down, without taking into account the fact that the development had been frustrated by the compulsory acquisition of the land, and that the appellant had been informed of the refusal of planning permission on that ground within 18 months after the commencement of the building sub-lease, when there was still a period of $7\frac{1}{2}$ years (including the option period) to run during which the appellant could carry out the proposed development. Once again, the Collector must have referred to these matters as relevant to his valuation of the appellant's interest at nil; and their Lordships consider that, to take them into account without at the same time adverting to the effect of the compulsory acquisition and the length of the unexpired period of the building sub-lease shows that here again the Collector erred in fact or in law.

Their Lordships further accept the appellant's submission that it was not for the appellant, on the hearing of the preliminary issue before the Commissioner, to adduce evidence relating to the value of his interest in the land. As is shown by the agreed order made by the Commissioner, that matter was for consideration at a later stage in the proceedings. The whole purpose of the preliminary issues heard by the Commissioner was to determine whether the Collector's award could stand; if it could not, the way was open for negotiations between the appellant and the trustees or, failing that, an investigation by the Commissioner of the market value of the appellant's interest. Their Lordships consider that this manner of proceeding was not only well intentioned, but also sensible; and they regret that an initiative intended to achieve a realistic valuation of the parties' respective interests with a minimum of further delay and expense should, in the outcome, have been productive of the very delay and expense which it was designed to avoid.

Their Lordships accordingly allow the appeal. The Collector must pay the appellant's costs before their Lordships, and the Collector and the trustees must pay his costs before the Court of Appeal and before the Board. The question of law posed by the Commissioner for the Court of Appeal (viz. whether he was correct in law in making his order) must be answered in the negative, and the matter must be remitted to the Board, to enable the Commissioner to proceed with the remaining issues on the basis that, on the second issue submitted to him, the Collector erred in concluding that the appellant's interest in the land was of nominal value worth only $1. Their Lordships earnestly hope however that, after all the delay that has occurred, the matter can now be disposed of as between the appellant and the trustees by mutual agreement.