

Privy Council Appeal No. 32 of 1992

Chan Lau Fong and 12 Others

Appellants

v.

The Attorney General of Hong Kong

Respondent

FROM

THE COURT OF APPEAL OF HONG KONG

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
25TH MAY 1993

Present at the hearing:-

LORD KEITH OF KINKEL
LORD GOFF OF CHIEVELEY
LORD JAUNCEY OF TULLICHETTLE
LORD MUSTILL
SIR MICHAEL KERR

[Delivered by Lord Keith of Kinkel]

The issue in this appeal from a judgment of the Court of Appeal of Hong Kong is whether an order made by the Governor for the resumption of certain plots of land in the village of Hoi Pa in the New Territories was ultra vires.

The facts are that Hoi Pa Village is situated in an area which by a zoning plan approved by the Governor in Council on 13th November 1973 was designated for the purpose of creating the New Town of Tsuen Wan. On 28th July 1981 the Governor in Council made an order that block resumption of an area comprising 1.1 hectares of Crown Land and 1.7 hectares of private land within the New Town site, and including the plots which are the subject of the present dispute, was required for a public purpose under section 3 of the Crown Lands Resumption Ordinance, (Cap. 124) and that the resumption of it was for a public purpose under section 2. Section 3 of the Ordinance provides:-

"Whenever the Governor in Council decides that the resumption of any land is required for a public purpose, the Governor may order the resumption thereof under this Ordinance."

Section 2 defines "resumption for a public purpose" as including, in paragraph (a) to (c), resumption for certain purposes which are specified and also, in paragraph (d):-

"resumption for any purpose of whatsoever description whether ejusdem generis with any of the above purposes or not, which the Governor in Council may decide to be a public purpose."

Following this order five separate resumption orders affecting the area were made by the Governor and gazetted and served under section 4 of the Ordinance, which provides:-

" (1) Where resumption is ordered a notice that the land is required for a public purpose and will be resumed shall be published in the Gazette in English and Chinese. (Amended 63 of 1974 s.4)

(2) A copy of such notice shall be served on the owner, if he can be found, and a further notice shall be affixed upon a conspicuous part of the land to be resumed or, where the land is divided into lots, sections or subsections, if practicable, upon each lot, section or subsection affected.

(3) The notice affixed to the land shall state the date on which it has been so affixed. It shall also state that the land will be resumed on the expiration of 1 month from such date, unless the Governor shall have authorized the giving of a longer period of notice, in which case the longer period shall be stated.

(4) A notice published and served or affixed under this section shall be deemed to be notice to the owner of the land and every person interested in the land or having any right or easement therein."

The planned development of the area covered by the block resumption order included the extension of a hospital, the building of a primary school, public parking facilities, district and local open spaces, the formation of streets and commercial and residential development. The 21 lots owned by the appellants were almost entirely in an area zoned for commercial and residential development. They were not covered by the five resumption orders mentioned above. From July 1988 onwards the first named appellant, Mr. Chan, on behalf of himself and the other appellants, made strenuous efforts to induce the Governor not to resume the lots unconditionally but to enter into an "in situ" exchange with the appellants which would enable them to develop the lots themselves for commercial and residential purposes, to their considerable financial advantage. These efforts were, however, unsuccessful, though they resulted in considerable delay. Eventually, on 10th July 1990 a resumption notice affecting the 21 lots (among others) was published in the Gazette in these terms:-

" GAZETTE NO. 29/1990

G.N. 2540

BUILDINGS AND
LANDS DEPARTMENTCROWN LANDS RESUMPTION ORDINANCE
(Chapter 124)PWP ITEM NO. 5CG
RESUMPTION OF LAND FOR DEVELOPMENT
AT HOI PA VILLAGE -
REMAINING ENGINEERING WORKS
TSUEN WAN, NEW TERRITORIES

To the owners of and every person interested or having any right or easement in the following lots shown coloured orange and orange hatched black on the plan numbered TWPR72B which is deposited in the District Lands Office, Tsuen Wan at 10th Floor, Tsuen Wan Station Multi-Storey Carparking Building, 174-208 Castle Peak Road, Tsuen Wan, New Territories and which is available for inspection there:-

Lots Nos. 861, 862 Sec. A, 862 Sec. B, 862 Sec. C, 862 Sec. D, 862 R.P., 863 Sec. A, 863 Sec. B, 863 Sec. D, 864 Sec. A, 864 Sec. B, 865 R.P., 866, 867 Sec. A., 869, 871, 872, 873, 874, 875, 876 R.P., 900, 902, 904, 907 Sec. B, 908, 909 R.P., 964 Sec. A, 979 Sec. D all in Demarcation District No. 449

TAKE NOTICE that the Governor in Council having decided that the above-mentioned lots are required for a public purpose, the Governor has ordered that the above-mentioned lots shall be resumed and revert to the Crown on the expiration of THREE MONTHS from the date of affixing of this notice to the said land.

10 July 1990

C.M. MO Principal Government
Land Agent "

The plan TWPR72B, referred to in the Gazette Notice, shows the area to be resumed surrounded by a black line, that line being described in the legend as "resumption/clearance limit". The area to be resumed is in the shape of the letter P, all the appellants' lots being in the upright of the P. Other plans show a proposed road running up the inside of the upright of the P, shaving a little off two of the appellants' lots, and across the transverse part of the P.

The appellants presented an application for judicial review on 28th September 1990 seeking an order of certiorari quashing the resumption order so far as affecting their lots and a declaration that it was null and void. The grounds relied on were, first, that the

resumption was not for a public purpose, and second, that the Governor in Council, in deciding on the resumption, had failed to take into account relevant factors or had taken into account irrelevant factors. On 30th January 1991 the application was dismissed, after trial, by Mr. R.G. Kotewall Q.C., sitting as a Deputy High Court judge, and his judgment was affirmed by the Court of Appeal (Sir Derek Cons V.-P., Kempster and Clough JJ.A.) on 17th December 1991.

A number of issues raised in the courts below and decided adversely to the appellants were not reopened before their Lordships' Board. The only point argued was whether, having regard to the heading of the notice of resumption, the notice was properly to be construed as meaning that the only public purpose for which the 21 lots were to be resumed was that of carrying out "remaining engineering works" in the shape of construction of a road. If that were the case, then the order went very much wider than was necessary for that purpose, since only a very small portion of two of the lots was in fact required for the road.

Their Lordships are satisfied that the notice of resumption does not fall to be so construed. The word "development" in the heading is not one which would naturally be used if the only purpose in view were the construction of a road. Its ordinary meaning is very much wider, and the circumstance that after a dash there follow the words "remaining engineering works" cannot reasonably be regarded as limiting its meaning. The trial judge and the Court of Appeal held that the dash was to be read in a conjunctive and not in a merely exegetical sense, and their Lordships have no doubt that they were correct to do so. The correctness of the conclusion is reinforced when regard is had to the surrounding circumstances which formed the background to the resumption notice. The block resumption approved in 1981 covered a large area of land, including the 21 lots, as being required for the comprehensive development of the Tsuen Wan New Town, undoubtedly a public purpose. This was well known to the appellants. The resumption notice was part of the process designed to achieve that purpose. Finally, consideration of the plan No. TWPR72B, incorporated by reference into the resumption notice, reveals that the whole area covered by it was to be cleared, that being obviously part of a public development purpose.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the respondent's costs before the Board.