Asia Development Pte Ltd *v* Attorney-General
[2020] SGCA 22

Case Number	: Civil Appeal No 166 of 2019
Decision Date	: 24 March 2020
Tribunal/Court	: Court of Appeal
Coram	: Sundaresh Menon CJ; Steven Chong JA; Quentin Loh J
Counsel Name(s)	: Mohamed Ibrahim s/o Mohamed Yakub (Achievers LLC) for the appellant; Khoo Boo Jin, Wong Thai Chuan, Ailene Chou Xiujue, Lee Hui Min, Kelvin Chong and Kenneth Mak (Attorney-General's Chambers) for the respondent.
Parties	: Asia Development Pte Ltd — The Attorney-General

Administrative Law – Judicial review – Exercise of discretion

Revenue Law – Stamp duties – Remission

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2019] SGHC 181.]

24 March 2020

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 The appellant is a corporate purchaser of real estate that exercised an option to purchase 55 Moonstone Lane. On 16 August 2012, it applied for remission of the additional buyer's stamp duty ("ABSD") on the property. The ABSD remission was granted subject to the completion and sale of the property by 5 August 2015. The Commissioner of Stamp Duties ("the Commissioner") granted an extension of the deadline to complete the development, but this proved insufficient. The appellant eventually paid the ABSD on the property (with interest) in November 2015. It completed the development and obtained a temporary occupation permit on 17 March 2016, and sold the property, which had by then been developed into two semi-detached houses, on 1 July 2016 and 15 August 2016.

2 The appellant made various applications for an extension of the deadlines for completing and selling the property. On 22 March 2017, it made its sixth and final application to the Minister for Finance ("the Minister") for an extension of 15 months and 19 days. This request was expressly made invoking the Minister's discretion under s 74(1) read with s 74(2B) of the Stamp Duties Act (Cap 312, 2006 Rev Ed) ("the SDA"). We reproduce these provisions for reference:

> **Power to reduce or remit duties**
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> **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.
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> …

(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).

3 The appellant's request was rejected seemingly on 22 May 2017 by the Chief Tax Policy Officer ("CTPO") of the Ministry of Finance, but this was not explicitly done in the name of the Minister. The CTPO's rejection of the appellant's request was communicated to the appellant's solicitors by way of a letter dated 23 May 2017 under the letterhead of the Inland Revenue Authority of Singapore ("IRAS"), and signed by a senior tax officer for the Commissioner. We refer to this decision as the "23 May Decision".

4 The appellant applied in Originating Summons No 961 of 2017 ("OS 961") for judicial review of the 23 May Decision. The relief sought included an order to quash that Decision and an order to mandate the Minister to reconsider its application for an extension of time. The appellant also sought a declaration that in allowing the CTPO to review appeals for the remission of ABSD under s 74(1) of the SDA, there had been an unlawful delegation of power by the Minister, and a declaration that the ABSD it had paid should be remitted, with interest. The High Court judge ("the Judge") dismissed OS 961: see *Re Asia Development Pte Ltd* [2019] SGHC 181 ("the Judgment").

5 The appellant challenges the Judge's decision on three principal grounds. First, the 23 May Decision was improperly made because it should have been made by the Minister personally and not by the CTPO. Second, it was made in breach of natural justice. Third, no reasonable decision-maker would have made such a decision in the circumstances. The appellant additionally submits that it was in fact the Commissioner, and not the CTPO, that made the Decision.

6 We deal first with the appellant's last contention, namely, that the 23 May Decision was made by the Commissioner. As reproduced above at [2], the power to grant the exemption or remission of ABSD is vested in the Minister under s 74(1) of the SDA, subject to any conditions he might impose. The power to waive any conditions imposed under s 74(1) is conferred under s 74(2B), similarly on the Minister. It was eventually attested by the CTPO that she made the decision to reject the appellant's request for a further and final extension of time for it to develop and sell the property. Consistent with this, the appellant pleaded in OS 961 for:

a. A Quashing Order to quash the decision in the letter of the Commissioner of Stamp Duties (the 'Commissioner') dated 23 May 2017 admitted by the Chief Tax Policy Officer of the Tax Policy Directorate of the Ministry of Finance (the 'Chief Tax Policy Officer') as made by her;

7 In our judgment, it is evident from the appellant's prayer for relief that these proceedings had been brought on the footing that the 23 May Decision was made by an officer of the Ministry of Finance. We do not think the appellant can now change course and argue that this was in fact a decision of the Commissioner, even though at various times the correspondence regarding the Decision was sent from the Commissioner and IRAS. We accordingly consider the Decision to have been made by the CTPO acting under the authority of the Minister.

8 We turn to consider the main substantive issue in this appeal, namely, whether the powers under s 74(1) and s 74(2B) of the SDA had to be exercised by the Minister in person, or whether it could be exercised by an officer within the Ministry of Finance on the basis of the Minister's authorisation. The Judge accepted at [13] of the Judgment, and we agree, that the latter view is correct. This is well established by the decision in *Carltona Ltd v Commissioners of Works and others* [1943] 2 All ER 560 ("*Carltona*"), where the English Court of Appeal said as follows (*per* Lord Greene MR at 563):

> … [T]he functions which are given to ministers … are functions so multifarious that no minister could ever personally attend to them. … It cannot be supposed that [the regulation concerned] 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. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the minister. The minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority, and, if for an important matter he selected an official of such junior standing that he could not be expected competently to perform the work, the minister would have to answer for that in Parliament. The whole system of departmental organisation and administration is based on the view that ministers, being responsible to Parliament, will see that important duties are committed to experienced officials. …

9 Two propositions can be drawn from Lord Greene MR's statement:

> (a) First, as a general rule, Ministers cannot be expected to exercise each of their functions in person. In our view, this is self-evidently correct. We do not mean by this to say that there are *no* functions that must be exercised by a Minister in person. Rather, whether the *Carltona* principle applies to allow powers conferred on a Minister to be exercised by his or her officers would depend on a contextual inquiry that considers the nature, scope and purpose of the function vested in the Minister, and the relevant language of the statute and of the specific provision in question. In particular, the court will have regard to whether the statutory language has the effect of excluding any devolution or delegation, as the case may be.
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> (b) Second, the Minister is responsible for the decisions of his or her officers acting under his or her authority. The Minister is answerable to Parliament for those decisions. It follows that it is generally a matter for Ministers, who are responsible to Parliament, to ensure that the duties and functions in question are carried out by duly experienced and qualified officers.

10 In our judgment, the *Carltona* principle is a sensible and pragmatic one that makes the business of government practicable. Turning to the facts of the present appeal, purely by way of illustration, the evidence indicated that the Ministry of Finance received something in the order of 1,700 applications pertaining to stamp duties in the three-year period from 2016 to 2018. If the Minister were required to process each of these applications personally, he would have to deal with about two applications every single day. If this approach were extended to require him also personally to consider other applications and requests of a similar nature that might be addressed to him, we are unable to see how he would have the time to carry this out, much less do anything else. That cannot be right. We emphasise that we point this out by way of illustration only, and our assessment that the present powers are capable of being dealt with by an officer acting under the responsibility or authorisation of the Minister is not based on an *ex post facto* analysis of the volume of work this would entail, but rather based on the nature of the power, which seems to us to be unremarkable and likely to involve a substantial volume. Further, there is simply nothing in the terms of s 74(1) and s 74(2B) of the SDA to require that these powers be exercised by the Minister personally.

11 Finally, for completeness, we turn to s 35 of the Interpretation Act (Cap 1, 2002 Rev Ed), which was not cited by the parties but which provides as follows:

> **Signification of orders, etc., of Minister**
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> 35. Where any written law confers upon a Minister power to make any subsidiary legislation or appointment, give any direction, issue any order, authorise any thing or matter to be done, grant

> any exemption, remit any fee or penalty or exercise any other power, it shall be sufficient, unless in such written law it is otherwise provided, if the exercise of such power by the Minister be signified under the hand of the Permanent Secretary to the Ministry for which the Minister is responsible *or of any public officer duly authorised in writing by the Minister*. [emphasis added]

12 As the provision does not require a Minister's power to be exercised by the Minister personally, it does not have any direct relevance to the present issue. The question before us is not whether the Minister's exercise of power was properly *signified*, but whether it had to be exercised by the Minister in person. In our view, that provision serves an evidentiary function, in that acts of a Minister would be deemed to be such if signified under the hand of the relevant Permanent Secretary or of a public officer duly authorised in writing by the Minister.

13 In the circumstances, we agree with the Judge that the *Carltona* principle applied to the powers conferred under s 74(1) and s 74(2B) of the SDA. It was not improper for the CTPO, as a duly qualified officer, to act under the Minister's responsibility to consider whether an extension of time under s 74(1) read with s 74(2B) should be granted to the appellant to develop and sell the property for the purposes of ABSD remission. There was therefore nothing improper in the discharge by the CTPO of her duties and this ground of challenge therefore fails.

14 Before leaving this point, we make one observation. Although we have said that there was nothing improper in the discharge by the CTPO of her duties, which we consider to have been an exercise of the responsibilities vested in the Minister, we think it is a matter of good practice for Government agencies in such circumstances to clearly identify the role and capacity in which they are acting and to explain this promptly when challenged. In this case, communications in this matter were made at various times by various agencies including the Commissioner and IRAS. This can give rise to concerns from the perspective of the public dealing with the Government agency in question.

15 In the present context, the 23 May Decision was communicated to the appellant by a letter from a senior tax officer for the Commissioner. The issue is whether the Commissioner ought also to have communicated that the 23 May Decision was made *by the Minister*. Denning LJ (as he then was) flagged a similar point in *Woollett v Minister of Agriculture and Fisheries* [1955] 1 QB 103 ("*Woollett*") at 120. The Act in question in that case did not require any formalities for the Minister of Agriculture and Fisheries to appoint members to a tribunal. Denning LJ reasoned, however, that:

> … There is some virtue in expecting a civil servant, when duly authorized, to use the words: 'I am directed by the Minister' and so forth: for that should bring home to him the significance of what he is doing and should make him realize that if he does anything wrong he will be implicating the Minister. …

16 Denning LJ considered that on the facts, there was no actual or professed authority to act on behalf of the Minister (*Woollett* at 121), as the civil servant in question also held the position as secretary of the tribunal and professed to have made informal arrangements in the latter capacity (at 119). While we accept that the present facts are somewhat different, nonetheless, in our view, it would be helpful to adopt a certain measure of formality in the communication of such decisions so that there is little, if any, room for confusion as to whom one is dealing with and in what capacity. It would be helpful in future cases for the Minister and IRAS to carefully explicate which party made the decision in question and the statutory powers engaged. This would have ameliorated much of the confusion in the proceedings below.

17 Turning to the remaining grounds of appeal, we can be very brief.

18 The appellant's solicitors set out the appellant's grounds for an extension of time in its 22 March 2017 request to the Minister. Three reasons were provided for its delay in completing and selling the property: first, the Urban Redevelopment Authority required it to acquire a strip of remnant land adjacent to the property; second, it had to terminate the employment of its project manager on grounds of corruption; and third, it faced adverse wet weather conditions from 2013 to 2015 that delayed the project. The CTPO made the 23 May Decision after considering input from IRAS, which was under the charge of the Commissioner. The appellant challenges the 23 May Decision as one that was made with the Minister, or more precisely the CTPO, having only heard one side's contentions (namely, those of the Commissioner). It submits that this was in breach of its right to a fair hearing and the rule against bias. The appellant also contends that there was a breach of natural justice because the CTPO was in effect considering an appeal against her own decision. We disagree with both of these points.

19 In the first place, there is no requirement of any formality as to how the Minister is to receive and process applications under s 74(1) and s 74(2B) of the SDA. In this instance, there is nothing to suggest that the appellant was not able to put its case across. Nothing has been said as to what it would have raised in any formal hearing that it failed to raise earlier, and which would have led the Minister to reach a different result. Moreover, the letter from the Commissioner communicating the 23 May Decision explained why the appellant's request was rejected. As stated in the letter, the appellant's reasons for the delay were typical factors that might delay a construction project and ought to have been factored into its timeframes to develop and sell the property. In our judgment, this explanation was sufficient to meet the requirements of fairness.

20 Aside from this, we think it is wrong to characterise this as a situation of an appeal. The powers under s 74(1) and s 74(2B) are both vested in the Minister. When an application is made under the latter subsection for a waiver of a condition imposed under the former subsection, it is not an appeal at all. Rather, it is an application to the same decision-maker to reconsider an earlier decision, and there is nothing objectionable in this.

21 The appellant also submits that the 23 May Decision was unreasonable in the *Wednesbury* sense. An application for judicial review on this ground requires an applicant to show that the decision was "so unreasonable that no reasonable authority could ever have come to it" (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223) or "so outrageous in its defiance of logic or of acceptable moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it" (*Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410). We do not think the 23 May Decision was unreasonable. The appellant was out of time and it was purely a matter of discretion, not obligation, on the Minister's part to grant the extension. Relatedly, although the appellant requests this court to declare that its deadlines for completing and selling the property should be extended, in our judgment this remedy is plainly inappropriate. The substantive decision-maker stipulated under s 74(1) read with s 74(2B) is the Minister, not the court, and we see no basis for thinking that the court could possibly step into the Minister's shoes and usurp his decision-making power.

22 Finally, the appellant raises some other stray grounds to challenge the 23 May Decision, which we find to be wholly without merit. In particular, it submits that its right to equal protection of the law under Art 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") entitles it to an appeal process similar to that enacted in other tax legislation, such as s 23 of the Property Tax Act (Cap 254, 2005 Rev Ed), s 50(1) of the Goods and Services Tax Act (Cap 117A, 2005 Rev Ed) and s 78(1) of the Income Tax Act (Cap 134, 2014 Rev Ed). That submission is, with respect, hopeless. Article 12 of the Constitution does not empower the court to read into the SDA any such appellate mechanisms where Parliament has not provided for one.

23 Equally, there is no merit at all in seeking to draw a parallel between the present appeal and the circumstances in which the court may grant an injunction to interfere with payment under a performance bond, as counsel for the appellant sought to do. Regarding the latter situation, it is true that the court may intervene to prevent a beneficiary from calling on a performance guarantee if it can be shown that the call was unconscionable. But, this has no relevance at all to the situation before us. We are concerned with judicial review of an administrative action in this case, whereas the cases concerning performance bonds are concerned with the entirely different question of when a court should interfere with a commercial contract.

24 For the foregoing reasons, we dismiss the appeal. Having heard the parties we fix costs in favour of the Attorney-General in the aggregate sum of $50,000 being the award of costs and disbursements here and below. We also make the usual consequential order for the payment out of the security.