Ng Boo Tan v Collector of Land Revenue
[2002] SGCA 36

Case Number : Land App 69/1999

Decision Date : 31 July 2002

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Michael Hwang SC, Shawn Chen and Sharon Lee (Allen & Gledhill) for the appellant; Eric Chin and Tan Hee Joek (State Counsel) for the respondent

Parties : Ng Boo Tan — Collector of Land Revenue

Land – Compulsory acquisitions – Compulsory acquisition of appellant's property for road development – Drop in market value of property as a result of road development – Respondent's award of compensation reflecting drop in value – Whether to disregard drop in value in calculating compensation – ss 33 & 34 Land Acquisition Act (Cap 152)

judgment delivered by Chao Hick Tin JA]

Judgment

Curia Advisari Vult

GROUNDS OF DECISION

1 I have perused the judgment of the majority delivered by the learned Chief Justice. The facts of the case are clearly set out therein and I do not propose to restate them. While I entirely agree with the first part of the judgment where it held that the positive and negative *Pointe Gourde* principle is an established common law principle, I have to, with the utmost respect, differ from my learned brothers where they proceeded to find that in the scheme of things under our Land Acquisition Act (the Act), the negative principle of *Pointe Gourde* can have no application. The effect of the positive and negative *Pointe Gourde* principle is that any appreciation or depreciation in the value of the acquired property that results from the scheme leading to the acquisition is to be ignored for the purpose of assessing the value of the property.

2 The provisions of the Act which are relevant to the case have been set out in the judgment of the majority. All I wish to do in this judgment is to set out my reasons why I find myself unable to take the approach which they have adopted.

3 For this purpose, it is necessary for me to set out the grounds upon which my learned brothers have held that the negative *Pointe Gourde* principle can have no application under the Act. First, they say that some provisions in the Act clearly conflict with the application of that principle, referring to s 33(1)(b) and s 33(5)(e). Second, relying on s 33(1) which provides that "in determining the amount of compensation to be awarded … the Board shall … take into consideration the following matters *and no others*", they say that the phrases "*and no others*" excludes the application of the negative *Pointe Gourde* principle. It would be noted that both grounds concern s 33.

Section 33

4 I shall deal with the two grounds in the same order. Section 33(1)(b) states that in determining the compensation payable, "any increase in the value of any other land of the person interested likely to accrue from the use of which the land acquired will be put" shall be taken into account. This provision overrides the decision in *South Eastern Rly Co v London County Council* [1915] 2 Ch 252 which held that the effect of the scheme on an adjoining property should be ignored when calculating the compensation for the acquired property. So *South Eastern Rly* would no longer apply. But I do not think anything more can or should be read into that.

5 In a sense, it can be argued that s 33(1)(b) strengthens the reverse argument: if Parliament had intended to do away with the negative principle of *Pointe Gourde,* it would have done so more clearly as it did in s 33(1)(b) in overriding *South Eastern Rly*, rather than leaving it to implications. In this regard, the second reading speech made by the then Minister for Law and National Development, Mr E W Barker, in Parliament when explaining the Land Acquisition Bill, 1966, which was intended to consolidate the law, is germane:-

> (1) the assessment of compensation provisions have been re-drafted on the basis of two principles enunciated by the Prime Minister in December 1963. Firstly, that no landowner should benefit from development which has taken place at public expense and, secondly, that the price paid on acquisition of land for public purposes should not be higher than what the land would have been worth had the Government not carried out development generally in the area, and (2) provision has been made for the hearing of appeals by an Appeals Board instead of the Court as at present.

6 As regards s 33(5)(e), this provision in summary states that in determining market value no account shall be taken of the potential value of the land for any other more intensive use other than the purpose designated in the Development Baseline (previously the Master Plan). As far as I can see, s 33(5)(e) has nothing to do with either the positive or negative principle of *Pointe Gourde*. This is borne out by the second reading speech of Mr Barker made on 18 December 1973 when explaining the object behind s 33(5)(e):-

> This will obviate the argument that is sometimes made where land has been zoned for a restrictive use, as for example, "public open space", that the land has got considerable potential for development for residential or other purposes. In future, such arguments based on the hypothetical consideration that a future change of zoning or use will be granted by the Planning Department will not be taken into consideration in determining the compensation payable upon acquisition. Thus, land zoned "Agriculture", "Rural", "Green Belt" or "Unclassified" at the time of acquisition, will be valued as such.

7 Finally, as regards the phrase "*and no others*" in s 33(1) it is true that the phrase was first introduced into the Land Acquisition Ordinance in 1932. The then Acting Commissioner of Lands, Mr WS Ebden, when speaking in the Legislative Council, made it clear that the phrase was inserted to limit the heads of compensation to only those enumerated in s 25 of the then Ordinance. Mr Ebden himself thought that even without the phrase, s 25 was clear enough and that owners whose lands had been acquired could only claim under those heads enumerated in s 25. But his predecessor had thought, in the light of a decision then, that what was listed in s 25 were merely guides and were not exhaustive and that an award could be given in respect of a matter which did not fall under any of those heads. So the phrase was inserted to remove any conceivable doubt.

8 At this moment, and for a better appreciation of the issue, it may be expedient if I set out the heads enumerated under the present s 33(1):-

> (a) the market value -
>
> > (i) (A) …(inapplicable) …;
> >
> > (B) … (inapplicable) …;
> >
> > (C) as at 1st January 1995 in respect of land acquired on or after 27th September 1995;
> >
> > (ii) as at the date of the publication of the notification under section 3(1) if the notification is, within 6 months from the date of its publication, followed by a declaration under section 5 in respect of the same land or part thereof; or
> >
> > (iii) as at the date of the publication of the declaration made under section 5, whichever is the lowest.
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> (b) any increase in the value of any other land of the person interested likely to accrue from the use to which the land acquired will be put;

> (c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing that land from his other land;
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> (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;
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> (e) if, in consequence of the acquisition, he is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to that change; and
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> (f) if, in consequence of the acquisition, any reissue of title is necessary, the fees or costs relating to survey, issue and registration of title, stamp duty and such other costs or fees which may reasonably be incurred.

9 In relation to the present case, heads (b) to (f) are not pertinent. Only head (a), which relates to how the market value is to be determined, is relevant. Under this head, the lowest of the market values on three different dates, namely, 1 January 1995, (the acquisition being after 27 September 1995), the date of publication of s 3(1) notification (in this case there was no such s 3(1) notification) and the date of publication of s 5 declaration, shall be taken to be the market value. This head really sets the valuation date and has nothing to do with the increase or decrease in value which is due to the scheme underlying the acquisition. It is common ground between the parties that in this case the applicable date is the date on which the s 5 declaration was published, the market being lowest at that point. So the market value on that date is determinative. It is vitally important to note that the *Pointe Gourde* principle relates to the determination of the market value and it does not add a new head of claim. In my view, there is nothing in head (a) nor in heads (b) to (f), which necessarily suggests that the *Pointe Gourde* principle should be disregarded in determining the market value of the acquired land.

10 If it were correct to hold that by virtue of the phrase "*and no others*" in s 33(1), the negative *Pointe Gourde* principle is excluded, then it should also be wholly unnecessary to provide in s 34(e) that the Board shall not take into consideration "any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired", this being the positive principle of *Pointe Gourde*. Why is there a need to have s 34(e) when such a claim or argument would not have been possible? Indeed, the enactment of s 34(e), which really relates to the determination of the market value, is inconsistent with the argument placed on the words "*and no others*" by the Collector of Land Revenue.

Presumption against implied alteration

11 In this connection, it is vitally important to bear in mind another settled principle of interpretation of statutes. The principle is that the court should not construe a statutory provision to have modified or altered a common law principle or right unless Parliament has by express words, or necessary implications, done so. Lord Reid said in *Black-Clawson International Limited v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 614:-

> There is a presumption which can be stated in various ways. One is that in the absence of any clear indication to the contrary Parliament can be presumed not to have altered the common law further than was necessary to remedy the "mischief"

12 In *National Assistance Board v Wilkinson* [1952] 2QB 648, Lord Devlin said (at p.661):-

> "It is a well-established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakeably to that conclusion."

13 In *Murugiah v Jaimudeen* [1955] AC 14 the Privy Council, on an appeal from Ceylon, approved the following passage found in *Maxwell's Interpretation of Statute (10th Edn at p.81)*:-

> "Presumption against implicit alteration of law: One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implications, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or departs from the general system of law, without expressing its intention with irresistible clearness."

14 A very useful summary of the principles on the interpretation of statutes is set out in *Bennion on Statutory Interpretation (3rd Edn)* at p.626. I should add that the author was a former British Parliamentary Counsel:-

> (1) It is a principle of legal policy that law should be altered deliberately rather than casually, and that Parliament should not change either common law or statute law by a sidewind, but only by measured and considered provisions. In the case of common law or Acts embodying common law, the principle is somewhat stronger than in other cases. It is also stronger the more fundamental the change is.
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> (2) The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe the principle. The court should therefore strive to avoid adopting a construction which involves accepting that Parliament contravened the principle.

15 The fact that Parliament had incorporated the positive principle of *Pointe Gourde* into s 34(e) does not necessarily mean that it had discarded the negative principle. It simply does not follow. In their judgment, my learned brothers accepted this. In fact, it could be argued that this fact reinforces the reverse argument: if Parliament intended to do away with the negative principle, it would have easily said so. When it does not say so, it must be inferred that Parliament had no such intention.

16 In this context, the decision of the Privy Council in *Melwood Units v Commissioner of Main Roads* [1978] WLR 520, a case on appeal from New South Wales, is on point. There, the Privy Council held that statutory enactment of only the positive *Pointe Gourde* principle did not imply that its converse principle was intended to be omitted. Lord Russell said (at 526):-

> In their Lordships opinion it is a part of the common law deriving as a matter of principle from the nature of compensation for resumption or compulsory acquisition, that neither relevantly attributable appreciation nor depreciation in value is to be regarded in the assessment of land compensation. The relevant New South Wales section merely reflects the law … and the absence of the reverse of the medal in the relevant section of the Queensland Main Roads Acts is not to be taken as altering the law."

17 The consequences of holding that the negative *Pointe Gourde* principle can have no place under our Act could be very severe. It could lead to the acquired property being compensated perhaps even nominally. Let me explain. As is often the case, a public scheme is announced before the lands affected are actually acquired. It could be six months, or a year or two before the acquisition. It could even be very much longer, as in the present case. Following the announcement, say for a new MRT station, if the land is affected totally, it is unlikely that thereafter there will be buyers for that land. If the negative *Pointe Gourde* principle is held not to be applicable, no one would thereafter touch it. In the past, perhaps some people might buy on speculation, expecting a near full compensation. With the instant ruling, the land may become totally unsaleable. Conceivably, the land could, as a result, have no significant market value at the time of acquisition. Any sale of another property around that area, which is not affected by the scheme, would hardly be an appropriate comparable. Such a consequence is indeed grave.

18 Even in a situation where only part of a land is acquired, the adverse consequence of the ruling will also be felt, although the extent of its effect would be less clear cut. It is common knowledge that, hitherto, whenever a public scheme affects a private property, be it a road line or any other public project, the value of the property will invariably be adversely affected. The extent of such adverse effect would necessarily depend on the circumstances. It is probably true to say that if the scheme was a road line, its negative effect on the price of the property would be less, as there was usually a belief that the road widening might not take place for some years to come and that when acquisition should occur there would be compensation. So a buyer of a property of 10,000 square feet, affected by a road line say to the

extent of 2,000 square feet, would naturally tell the owner that he really had only 8,000 square feet to sell. But the owner would be able to retort that if that part were eventually acquired, the buyer would be compensated. But with this ruling, I am not sure an owner can truly tell a buyer that he would be adequately compensated for the part which would be acquired.

19 All these discussions may appear somewhat theoretical. But when one looks at the figures thrown about (e.g., $488,000/$285,000 or $406,000/$240,000) in relation to the case which give rise to the present Case Stated, the problems are real. They indicated a drop of some 40%. This was under the current position before this Case Stated where the seller and buyer were unaware as to how the negative *Pointe Gourde* principle was to be applied, but with the buyer thinking he would be compensated in the usual way. It must follow that if the negative *Pointe Gourde* principle were now held to be inapplicable, the consequential fall in value will be even more severe.

20 I would hasten to add that I recognise, as pointed out by State Counsel for the Collector, that if we were to apply in general the negative principle of *Pointe Gourde*, it could lead to an owner, who has purchased a property at a depressed price from a desperate seller during the interim period between the announcement of the scheme and the actual acquisition, getting a windfall. This aberration cannot and should not be a good enough reason to deny other owners their just due. With respect, the reasoning is *non sequitur*. If this sort of aberrations should give rise to concern, the solution lies in further fine tuning the law by legislative intervention.

Objects of the Act

21 I am conscious that the Act is a piece of social legislation for the good of society as a whole. Public interest stands paramount. No one should stand in the way of the progressive development of the country: thus the need for an acquisition law. For some property owners, it is not just a question of price. They simply would not want to move, no matter how attractive the offer. We have read in the media where some owners even refused an en bloc sale where they could have reaped significant benefits. While it is understandable that they may have sentimental attachment to the place, such sentiments should never be allowed to stand in the way of progress and public interest. While the Act has set out the perimeters (under ss 33 and 34) as to how the compensation of an acquired property is to be assessed, some of which are obviously geared towards giving something less than the current market value to the owner (like s 33(1)(a) – the lowest value based on three different dates), it is highly doubtful that Parliament intended the owner to bear the brunt of the sacrifices which would be the case if the negative principle is not applied. Here, I think Mr Barker's speech in 1966, which is quoted in 4 above, should be placed foremost in mind.

22 It would be noted that the emphasis by Mr Barker was on landowners benefitting, and to make sure they would not. That was the cardinal object. But it is altogether another thing to expect an owner to lose his property as well as to suffer very substantial loss in terms of compensation. It would be a heavy burden to place only on the owner, instead of spreading the burden among taxpayers.

23 I would further add that Mr Barker reiterated the same objective in his third reading speech of the 1966 Bill, after it was examined by the Select Committee, when he said the following:-

> As has already been explained in this House previously, the principle underlining this provision is that no landowner should benefit at the public's expense, from any windfall gains resulting from enhancement of land values either through Acts of God or because of public expenditure in the neighbourhood. Members are aware of the phenomenal increases in land values which result when heavily encumbered lands are devastated by fire. This fortuitous increase in value will not now go to the landowner. Again, development by Government and public authorities in areas like Jurong, Kallang Basin and Kranji has resulted in phenomenal increases in land values in these neighbourhoods. It was ironical that under the existing legislation, when additional lands in these areas had to be acquired for public purposes, Government had to pay compensation at values which Government itself had helped to enhance. The element of enhancement attributable in these cases to public participation (as opposed to participation by the private sector), is the element which under the new Bill will be creamed off when land is acquired for public purposes. (Emphasis added).

24 All said, even with the application of the negative principle and the owner gets compensation near to the market value, it would not help him do more than to acquire something equivalent elsewhere in the open market. There will not be any gain or benefit of the sort which the Minister for Law and National Development said the statutory scheme under the Act was intended to prevent the owner from obtaining.

25 It seems to me critical to bear in mind that what is encapsulated in the positive and negative principle of *Pointe Gourde* is really fairness. A landowner should not benefit from the proposed scheme leading to the acquisition; but neither should he be penalised on that account.

26 There is a previous case where the *Pointe Gourde* principle was raised in argument – *Chew Ming Teck v Collector of Land Revenue and anor* [1988] SLR 118. It was a decision of this Court. In that case, it was argued that no account should be taken of the fact that planning permission for redevelopment by the owner was refused due to a public scheme. This Court seemed to have accepted that the *Pointe Gourde* principle applied, although it was true that the respondents there agreed with the appellant's argument that the land must be valued for compensation leaving out of account any effect on value, either up or down, of the acquisition itself or the scheme underlying it. But, on the facts, the Court held that when the Collector awarded the appellant a nominal sum of $1/- he did not allow the refusal of the planning permission to the appellant to influence his valuation, either up or down, as the interest which the appellant had in the land was only a building sublease under which, upon the completion of the new buildings, the owners of the land would grant to the appellant a lease of 30 years with two options of 30 years each. All I would observe is that the Collector in the present case is taking a stand different from that he had taken in *Chew Ming Teck* as far as the negative *Pointe Gourde* principle is concerned.

Conclusion

27 In conclusion, it is my opinion that there is nothing in the Act which necessarily suggests that the negative principle has no place under our statutory scheme of compensation. Parliament wanted to modify the ruling in *South Eastern Rly Co,* so there is s 33(1)(b). Similarly, Parliament expressly incorporated the positive principle of *Pointe Gourde* in s 34(e) in order to make it clear beyond doubt that that principle applies. So it cannot be said that Parliament was not aware of the negative principle. In any case, as mentioned before, the fact that there is no express reference to the negative principle does not mean that the negative principle is thereby impliedly abrogated. Bearing in mind the ministerial speeches made in Parliament as to the objects of ss 33 and 34 of the Act, I am humbly of the view that it was not the intention of Parliament that a common law principle such as this, which concerns rights of property owners, should be done away with by a sidewind. Otherwise, Parliament would have said so as expressly as they did in s 33(1)(b) in relation to the rule enunciated in *South Eastern Rly Co*.

28 I deeply regret that I am unable, in this instance, to come to the same views as my learned brothers, whose opinions I have always held in the highest regard.

Sgd:

Chao Hick Tin

Judge of Appeal