Swee Hong Investment Pte Ltd v Collector of Land Revenue
[2004] SGCA 5

Case Number : CA 7/2003

Decision Date : 12 February 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Woo Bih Li J; Yong Pung How CJ

Counsel Name(s) : Jeffrey Beh and Lee Bon Leong (Lee Bon Leong and Co) for appellant; Leonard Goh (Attorney-General's Chambers) for respondent

Parties : Swee Hong Investment Pte Ltd — Collector of Land Revenue

Land – Compulsory acquisitions – Compensation payable – Basis of valuing acquired property – Possibility of future en bloc sale of acquired property – Whether should be taken into account – Sections 33(5)(e), 34(e) Land Acquisition Act (Cap 152, 1985 Rev Ed)

12 February 2004

Chao Hick Tin JA (delivering the judgment of the court):

1 This was an appeal by a property owner against an award of compensation rendered by the Land Acquisition Appeals Board ("the Board") on the ground that the Board had erred on a matter of principle in its determination of the quantum of the award. We heard the appeal on 26 January 2004 and dismissed it for the reasons which we now set out.

The background

2 Lot 8156L Mukim 24 ("the land"), an industrial land located at Paya Lebar, had an area of 6,880.9m². Erected on the land was a structure known as "Swee Hong Industrial Building" ("the building"). The building comprised 13 strata-titled lots and each strata lot was assigned a certain number of shares, out of a total of 1,000 shares. Five of the strata lots belonged to Swee Hong Investment Pte Ltd ("Swee Hong"), the appellant, and they carried a total of 465 shares.

3 On 28 April 2001, a notification under s 5 of the Land Acquisition Act (Cap 152, 1985 Rev Ed), ("the Act") was published in the Gazette declaring that Lot 8156L was acquired for a public purpose, namely, the construction of the Circle Line and comprehensive development. On 14 December 2001, the Collector of Land Revenue ("the Collector") made a total award of $9,066,000 to Swee Hong for the five strata lots, based on comparables. Swee Hong, being dissatisfied with the award, appealed to the Board.

4 In Swee Hong's petition of appeal, it claimed that the proper compensation for the five strata lots was $25,909,000. At the hearing before the Board, the Collector revised the total amount upwards to $10,563,000. At the conclusion of the hearing, the Board awarded Swee Hong only $10,785,000, an increase of $222,000 over the award by the Collector. Again, being dissatisfied, Swee Hong appealed to us.

Issues

5 At the outset, we ought to state that under s 29(2) of the Act, a party whose property has been acquired and who is dissatisfied with the award of the Board may only appeal to this court "upon any question of law". In order to satisfy this condition, Swee Hong alleged that the Board erred on a matter of law. It said that the Board was wrong to have evaluated each of the five lots separately,

based on comparables, and add them up to constitute the total compensation payable. It argued that the correct approach would be to value the land as a whole and then divide the valuation sum proportionately in accordance with the share value of each strata lot. Even though Swee Hong sought in its Case to split the issue into four sub-heads, it was really one main issue as described in this paragraph.

6 Before we turn to examine the issue, we would like to touch on a preliminary point raised by the respondent, the Collector. He said that the issue which Swee Hong sought to bring before this court was not a question of law, but a question as to the proper method of valuation, a question of fact. In this regard, the Collector relied upon the following passage of this court in *Tiessen Trading Pte Ltd v Collector of Land Revenue* [2000] 3 SLR 1 at [17]:

> It was clear … that the only question raised in this appeal was that of the proper method of valuation of the subject land. While this may safely be regarded as a question of quantum or a question of fact, there was no doubt that it was certainly not a question of law.

The court then went on at [18] to explain why the method of valuation could not be a question of law:

> The question of the proper method of land valuation involves detailed analyses of market trends, comparisons between different types of land and their locality and a whole host of other complex variables which, in our view, are more suited to be resolved by experts in the field itself.

7 In a sense, it could be said that the issue that was raised by Swee Hong did not quite touch on the matters (which were no doubt no more than examples) enumerated by this court in *Tiessen Trading* as relating to valuation methods. However, in the light of our views on the main issue, it was wholly unnecessary for us to firmly categorise whether the issue here was one of valuation methods or a matter of law. Putting it another way, this case illustrates the perennial difficulties of determining whether a question is one of fact or law.

Applicable provisions

8 Section 33(1) of the Act provides that compensation has to be in accordance with market value. It was common ground between the parties that the market value of the five strata lots as at the date of the s 5 notification was the relevant date. Subsection (5) of s 33 sets out a number of pertinent considerations for determining market value, and for the present purposes, para (e) was germane:

> [T]he market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the Development Baseline referred to in section 36 of the Planning Act 1998, whichever is the lower, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act 1998 and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other more intensive use[.]

Arguments of Swee Hong

9 Swee Hong pointed out that what was acquired by the Collector pursuant to the notification of 28 April 2001 was the entire piece of land known as Lot 8156L, with a total area of 6,880.9m², although particulars of the 13 strata lots were also given, including the names of their respective

owners. That being the basis of the acquisition, therefore, the correct principle which the Board should have adopted to determine the proper compensation was to value the land as a whole and then divide the sum proportionately according to the strata lots' share values. Each strata lot had only an undivided share in the freehold interest of the entire land. The Board had erred in law in making the award based on three comparable transactions of strata lots in the same building because such reliance failed to give "consideration of an eventual sale on an en-bloc basis in the future".

10 Relying on s 33(5)(e) of the Act and s 36 of the Planning Act (Cap 232, 1998 Rev Ed), Swee Hong claimed that Lot 8156L had a maximum permissible gross plot ratio of 2.49 for industrial development. On this basis, and taking the transaction on 2 August 2000 of Nos 16 and 20 Kallang Pudding Road as a guide, the whole land would have had a value of $42,510,000 and the five strata lots should thus be valued at $19,767,150. However, we should add that this claim of Swee Hong of the land having a gross plot ratio of 2.49 was disputed. In fact, before the Board, it was common ground that its gross plot ratio was only 0.44.

Our reasons

11 It seemed to us that there were a number of obstacles in the way of the appellant's contention. First, Swee Hong sought compensation on the basis of an *en bloc* sale, when nothing was afoot among the various strata lot holders of the land to effect such a sale. There was wholly no basis to adopt the method of evaluation when Swee Hong held only five strata lots, with a total share value of 465 out of 1,000. If on the date of the acquisition Swee Hong were to have sold the lots, it would certainly not be able to obtain a value as if the lots formed part of an *en bloc* sale. What Swee Hong sought was not the market value of the five strata lots, but something more. It wanted a windfall. This was clear from para 24 of its Case where it was stated:

> It is submitted that in the en-bloc sales of properties in Singapore, the prices achieved very often reflects a "premium" varying from as low as 30% to more than 100% over the value of the subdivided units when transacted on an individual basis.

12 We would further add that an *en bloc* sale was often conditional upon written permission being granted to redevelop the site for a specific purpose. As mentioned above, an *en bloc* sale was never contemplated by the strata lot owners of the building, and neither was any application made to the proper authorities to obtain permission for a specific redevelopment.

13 The test for determining what a willing buyer would pay for one or all five strata lots of Swee Hong must surely be the market value of each individual strata lot. No buyer of the five lots would pay as if there was a total sale of all 13 strata lots. Here, we must observe that while the s 5 notification described the land to be acquired as Lot 8156L Mukim 24 with an area of 6,880.9m², it also set out Strata Title Plan No 1331 together with a description of the strata lots and their subsidiary owners.

14 Second, Swee Hong's claim ran counter to s 33(5)(e) of the Act. This provision prescribes that the market value is not to exceed the price which a *bona fide* purchaser might reasonably be expected to pay for the land,

(a) on the basis of its existing use ("existing use clause"); or

(b) in anticipation of the continued use of the purpose designated in the Development Baseline referred to in s 36 of the Planning Act 1998 ("Master Plan use clause"),

whichever is lower.

15 It seemed to us that in making its argument, Swee Hong had overlooked the important qualification in s 33(5)(e), namely, "whichever is the lower". Its argument was completely at odds with what Parliament had laid down, as if the qualification were "whichever is the higher".

16 State Counsel for the Collector also relied upon the end part of s 33(5)(e), namely, "and no account shall be taken of any potential value of the land for any other more intensive use" ("the final clause"), to counter the contention of Swee Hong. However, we entertained some doubts as to whether the final clause was of any relevance in the context of the present case. We recognised that the final clause was an overriding proviso. However, the object of this final clause was explained by the Law Minister in Parliament on 18 December 1973 during the Second Reading speech as follows:

> 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.

17 Here, Swee Hong was not saying that the subject land, which was zoned industrial land, had a potential of being put to more intensive use and thus was more valuable. All it asked was that the land be valued as a whole according to the Master Plan use.

18 Counsel for the Collector also relied upon s 34(e) to argue that what was asked for by Swee Hong was barred by this provision. Again we do not think the provision was germane to the contention of Swee Hong. Section 34(e) provides that in determining the amount of compensation to be awarded for land acquired under the Act, the Board should 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". The subject land was acquired in relation to the construction of the Circle Line of the Mass Rapid Transit system and for comprehensive development in connection therewith. Swee Hong had not advanced its case on the basis that the value of the land was enhanced on account of the purpose for which the land would be put to upon acquisition. As alluded to above, Swee Hong's case was very specific. It was asking for a valuation as if the owners of all the strata lots had agreed to an *en bloc* sale.

19 Lest it be misunderstood, we would hasten to add that we must not be taken to have determined that had there been a collective decision by all the owners of Strata Title Plan No 1331 to undertake an *en bloc* sale prior to the acquisition, the owners would have been entitled to compensation on that enhanced basis. This situation did not arise here and we would leave that for an appropriate case on another day.

Appeal dismissed.