Per Ah Seng Robin and another *v* Housing and Development Board and another [2015] SGCA 62

Case Number	: Civil Appeal No 188 of 2014
Decision Date	: 30 November 2015
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Andrew Phang Boon Leong JA; Judith Prakash J
Counsel Name(s)	: Kirpal Singh s/o Hakam Singh (Kirpal & Associates) for the appellants; Dhillon Dinesh Singh and Teh Shi Ying (Allen & Gledhill LLP) for the first respondent; Khoo Boo Jin, Ang Ming Sheng Terence and May Ng (Attorney-General's Chambers) for the second respondent.
Parties	: (1)ROBIN PER AH SENG — (2)TEE BEE KIAW — (1)HOUSING AND DEVELOPMENT BOARD — (2)THE ATTORNEY-GENERAL

Administrative Law – Judicial review – Application for leave to commence judicial review proceedings

Administrative Law – Judicial review – Illegality

Administrative Law – Natural justice – Disclosure of evidence

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2015] 2 SLR 19.]

30 November 2015 Judgment reserved.

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

Introduction

1 Jean-Jacques Rousseau once spoke of a social contract that undergirds the relationship between the Government and the governed. In Singapore, there is perhaps no social contract more far-reaching than that relating to flats provided by the Housing and Development Board ("HDB"), in which the vast majority of Singapore's population lives. Very often, subsidies of one form or another are provided by the Government to make the purchase of these flats more affordable for eligible Singapore citizens and Singapore permanent residents. But, as *quid pro quo*, flat owners (more accurately, long-term lessees of the flats) are expected to adhere to the 14 conditions laid down in s 56 of the Housing and Development Act (Cap 129, 2004 Rev Ed) ("the Act"). The breach of any of these conditions may result in the HDB compulsorily acquiring a flat. One such condition is the rule against unauthorised subletting under s 56(1)(*h*) of the Act. The present appeal raises the question of whether the HDB was right in taking back a flat (referred to hereafter as the "Flat") from the appellants, a married couple, on that ground. The judge in the court below ("the Judge") thought so (see *Per Ah Seng Robin and another v Housing and Development Board and another* [2015] 2 SLR 19 ("the GD")), and the appellants have appealed against his decision.

Background facts

The purchase and subletting of the Flat

2 The appellants are Mr Robin Per Ah Seng ("Per") and his wife, Mdm Tee Bee Kiaw ("Tee"). The

first respondent is the HDB, and the second respondent is the Attorney-General ("the AG"), who appears on behalf of the Minister for National Development ("the Minister").

3 The appellants purchased the Flat, a four-room property (with one living room and three bedrooms) situated at Block 621 Bukit Batok Central, #07-512, Singapore 650621, on 1 October 2007 from the resale market for $368,000. The HDB provided a concessionary interest rate loan of $288,000 to the appellants under its Public Housing Scheme. Subsequently, the appellants entered into a sub-tenancy agreement with Offshore Construction Specialists Pte Ltd ("Offshore Construction") on 21 January 2009, under which they agreed to rent out two bedrooms in the Flat to Offshore Construction, to be occupied by not more than three persons at a time, at a monthly rent of $2,050 for a period of 24 months from 1 February 2009 to 31 January 2011. The HDB approved this sub-tenancy arrangement ("the Sub-Tenancy Agreement") on condition that the Flat would not be sublet in its *entirety*. The appellants declared on the HDB's online portal sometime in April 2010 that the Flat had three occupiers living in two of the three bedrooms pursuant to the Sub-Tenancy Agreement. These three occupiers, namely, Messrs Yoosomsook Settha, Kurund Santosh Appasaheb and Cahya Adi Kurniawan ("Cahya"), were foreign workers employed by Offshore Construction.

The inspection of the Flat

4 On 23 December 2009, the HDB received an anonymous tip-off that the appellants were subletting the *entire* Flat, and that they and their young daughter were not residing in it. Instead, they were living in a private condominium apartment at 21 West Coast Crescent, #20-03, Blue Horizon, Singapore 128045 ("the Blue Horizon property"). The appellants had purchased the Blue Horizon property for $730,000 on 3 August 2007, approximately two months before purchasing the Flat. And in the process of purchasing the Flat, the appellants falsely declared to the HDB that they did not own any private property. For completeness, we should mention that shortly after the appellants purchased the Flat, Tee also separately purchased a condominium apartment at 73 Jurong West Central 3, #09-21, The Centris, Singapore 648336 ("the Centris property") on 9 November 2007. Following the tip-off of 23 December 2009, the HDB hired a private investigator, Malaysian Investigation Pte Ltd ("the Private Investigator"), to monitor the Flat. The Private Investigator subsequently submitted a report to the HDB.

5 On 25 May 2010, two officers from the HDB conducted an inspection of the Flat. They found clear signs that the entire Flat had been sublet, and that the appellants and their daughter did not reside there. The officers were let in by one Mr Sayeh Dedi Mahdy ("Sayeh"), a foreign worker employed by Offshore Construction who was residing in the Flat at that point in time. Sayeh was not one of the persons registered on the HDB's online portal as an occupier under the Sub-Tenancy Agreement.

6 In the course of inspecting the Flat, the HDB officers noted, among other things, that there was a strong stench of cigarette smoke in the Flat, and that there were ashtrays on the table in the living room. This struck them as odd as it is not common for a family with a young child to allow smoking in the home. The officers also found that all three bedrooms were each occupied by one foreign worker, with only one single bed in each bedroom. Each bedroom was sparsely furnished, and there were no personal effects in any of the rooms to suggest that a family of three was residing in the Flat. In addition, the foreign workers hung their washed uniforms in front of the refrigerator and above the kitchen worktop. As proof, the HDB officers took photographs, which were tendered to the Judge in the proceedings below.

7 The HDB officers also interviewed Sayeh, who provided the following statement dated 25 May 2010 on a piece of paper bearing the HDB's logo:

1. I have rented the above flat from the owners since Feb 2009 till date.

2. I am occupying the flat with 2 other flatmates.

3. The monthly rental is paid by my employer.

4. The monthly utilities bills are paid by my employer.

5. The owners did not reside in the flat.

The HDB's letter of intention

8 Based on the evidence that it had gathered, the HDB took the view that there were sufficient grounds to establish that the *entire* Flat had been sublet without its prior written approval, and that it was therefore empowered under s 56(1)(*h*) of the Act to compulsorily acquire the Flat. Accordingly, on 17 July 2010, pursuant to s 56(3) of the Act, the HDB sent a letter of intention to the appellants stating the following:

> Dear Mr Per and Mdm Tee,
>
> **LETTER OF INTENTION TO TAKE ACTION FOR UNAUTHORISED SUBLETTING OF FLAT WHILE YOU AND YOUR FAMILY ARE NOT IN CONTINUOUS PHYSICAL OCCUPATION – APT BLK 621 BT BATOK CTRL, #07-512, S(650621)**
>
> *Our investigations revealed that you have sublet your flat to Mr Sayeh Dedi Mahdy … and his 2 flatmates from the month of Feb 09 without HDB's prior written consent and that you and your family are not in continuous physical occupation of the flat.* This is a breach of the terms of the flat lease and an infringement under section 56(1) of the Housing & Development Act.
>
> 2 The HDB is thus intending to **compulsorily acquire** your flat for the infringement under s. 56(1)(h) of the Housing & Development Act. All payments received by the HDB from you shall be strictly on a without prejudice basis and all our rights of action against you are hereby strictly reserved. In the meantime, please take immediate steps to evict the unauthorised occupiers/unauthorised sub-tenant from your flat.
>
> …
>
> [underlining and emphasis in bold in original; emphasis added in italics]

It was not disputed that the appellants received this letter, but did not respond to it.

9 For ease of reference, we set out ss 56(1)(*h*) and 56(3) of the Act below:

> **Board [*ie* , the HDB] may compulsorily acquire property sold subject to the provisions of this Part**
>
> **56.**—(1) The Board may compulsorily acquire any flat, house or other living accommodation sold subject to the provisions of this Part, whether before or after 2nd June 1975 —
>
> …
>
> (*h*) if the owner thereof assigns, *underlets* or parts with the possession of the same or

any part thereof *without obtaining the prior written consent of the Board as required by the lease*;

…

(3) Where the Board intends to exercise its powers of compulsory acquisition conferred by this section, the Board *shall serve a notice in writing on the owner* of the flat, house or other living accommodation and all persons known or believed to be interested in claiming all or any part of the compensation to be paid for the flat, house or living accommodation (referred to in this Part as an interested person) stating the intention of the Board to acquire the premises and the compensation to be paid therefor.

…

[emphasis added]

The HDB's notice of intention

10 Approximately three months later, on 6 October 2010, the HDB again notified the appellants in writing that it intended to compulsorily acquire the Flat under s 56(1)(*h*) of the Act. The notice of intention which the HDB sent to the appellants stated:

Please take notice that pursuant to Section 56(1)(h) of the Housing and Development Act (Cap 129, Revised Edn 2004), the Housing and Development Board ("the Board") intends to compulsorily acquire the above flat on the ground that you have *sublet your flat without obtaining prior written consent of HDB*.

The Board has further decided that the compensation payable for the acquisition of the above flat shall be the sum of $286,500.00. The compensation payable shall be subject to the discharge of your mortgage loan (with interest) and deduction of all monies owing to the Board, the Town Council or other Authorities, plus Goods and Services Tax on such monies payable and all disbursements incurred by the Board.

Your attention is drawn to sub-sections (4), (5) and (6) of Section 56 of the Housing and Development Act. The sub-sections are printed overleaf for your information. **YOUR ATTENTION IS ALSO DRAWN TO THE NOTE PRINTED OVERLEAF.**

[emphasis in bold in original; emphasis added in italics]

11 Sections 56(4), 56(5) and 56(6) of the Act, which were reproduced overleaf on the notice of intention, read as follows:

(4) Any owner or interested person who objects to a proposed acquisition by the Board may, within 28 days after the service of a notice referred to in subsection (3), submit in writing to the Board precisely the grounds upon which he objects to the acquisition and the compensation offered by the Board.

(5) The Board shall consider the objection and may either disallow it or allow it either wholly or in part, and shall serve the owner or interested person by post or otherwise with a written notice of its decision.

(6) Any appeal by any owner or interested person aggrieved by the decision of the Board shall be made to the Minister within 28 days after the date of service of such decision on the owner or interested person and the decision of the Minister shall be final and not open to review or challenge on any ground whatsoever.

The appellants' letter of objection

12 On 28 October 2010, the appellants finally responded by sending a letter of objection to the HDB under s 56(4) of the Act. In his affidavit dated 15 May 2014, Per stated that he and his wife sent this letter after he spoke to the occupiers of the Flat. The appellants objected to the compulsory acquisition of the Flat on the ground that they had rented out only two of the three bedrooms in the Flat. According to the appellants, one remaining bedroom had not been rented out and had in fact been retained for them and their daughter to live in, but they had been too trusting in leaving it unlocked. The appellants said that they did not give explicit permission to the occupier sleeping in that bedroom to move in. They also stated in their letter that they had decided to temporarily stay with Per's widowed mother in order to take care of her because she suffered from poor health and there was no one else to care for her. This was not, however, a permanent arrangement, and they would ultimately return to occupy the whole of the Flat. The appellants further added that they were negotiating with "the tenants" to terminate the Sub-Tenancy Agreement and have all the occupiers vacate the Flat (the appellants did not make it clear in their letter whom they regarded as "the tenants", but presumably, they meant Offshore Construction). The appellants enclosed in the letter a copy of the Sub-Tenancy Agreement with Offshore Construction and the registration of the occupiers' particulars.

The HDB's rejection of the appellants' letter of objection

13 The HDB, acting under s 56(5) of the Act, informed the appellants by way of a letter dated 29 November 2010 that their appeal against the compulsory acquisition of the Flat was unsuccessful, and that the HDB would proceed to vest legal ownership of the Flat in itself if no further appeal was made to the Minister under s 56(6) within 28 days from the date of service of that letter. In that letter, the HDB also stated:

> … [The] subletting of [the] whole flat without HDB's prior approval is an infringement of the lease and the [Act]. Those who commit the infringement are liable to have their flat compulsorily acquired.

The appellants' appeal to the Minister

14 The appellants submitted an appeal to the Minister under s 56(6) of the Act by way of a letter dated 27 December 2010 stating that they had explained the background events leading to the infringement in their earlier letter of 28 October 2010 to the HDB. In their letter to the Minister, the appellants stated that the breach had been a "one-off incident" and had not been committed for personal financial gain. The appellants emphasised that they had purchased the Flat from the resale market without any government grant. In addition, the appellants said that they had rectified the breach immediately by terminating the Sub-Tenancy Agreement and the occupiers had since vacated the Flat. The appellants indicated their willingness to accept any form of penalty on account of the breach, but submitted that the compulsory acquisition of the Flat was "too harsh". Finally, the appellants appealed for "a certain degree of compassionate [*sic*]", expressing the hope that the Minister would take into consideration the fact that they had had to temporarily move to stay with Per's widowed mother as she was in ill health.

The Minister's rejection of the appellants' appeal

15 By a letter dated 14 March 2011, the HDB informed the appellants that their appeal had been "carefully considered" by the Minister but had been rejected. It was further stated in this letter that steps would be taken to vest ownership of the Flat in the HDB, and that the appellants had to return vacant possession of the Flat to the HDB within 30 days of the service of the notice of vesting.

Vesting of title to the Flat in the HDB

16 On 7 April 2011, the HDB, acting under s 57(1)(*a*)(ii) of the Act, lodged with the Registrar of Titles the relevant instrument to vest title to the Flat in itself. On 11 April 2011, the Registrar of Titles duly registered and endorsed on the lease to the Flat that title to it had vested in the HDB. The appellants' mortgage was cancelled by the Registrar of Titles on the same day.

17 By the HDB's Notice of Vesting and To Take Possession dated 20 April 2011 ("the notice of vesting"), the appellants were notified, *inter alia*, that title to the Flat had been vested in the HDB on 11 April 2011, and that "any interest of the lessee therein had since absolutely determined". The appellants were told to remove all furniture and belongings from the Flat, and that the HDB would take possession of the Flat on the expiry of thirty days from the date of the notice.

The appeals by the Member of Parliament

18 In the meantime, after the appellants received the letter of rejection dated 14 March 2011 (see [15] above), Per approached a Member of Parliament, Mdm Halimah Yacob ("the MP"), for help on 21 March 2011. On that same day, the MP wrote a letter of appeal to the Minister on the appellants' behalf, but this appeal was in vain. Thereafter, on 18 April 2011, the MP wrote another letter of appeal, this time, to Mr Teo Chye Hwa ("Teo"), Head of the HDB's Bukit Batok Branch Office, but this appeal too was unsuccessful. The points raised in the two letters of appeal from the MP were largely similar, and were essentially repetitions of the points raised by the appellants in their earlier appeals of 28 October 2010 and 27 December 2010 to, respectively, the HDB and the Minister. In informing the appellants that the MP's letters of appeal had been rejected, the HDB stated in writing on more than one occasion in July 2011 that the Minister's decision affirming the HDB's compulsory acquisition of the Flat was "final" and was "not open to review or challenge". This was subsequently reiterated in the HDB's letters to the appellants between September 2011 and May 2012.

19 On 9 September 2011, Per went to see the MP again, informing her that her letters of appeal had been rejected. The MP then telephoned Teo, who requested documentary evidence or valid reasons as to why Per had parked his car (bearing registration number SJH 4098G) at his sister-in-law's condominium ("The Jade"), which was located near the Flat. (It is not clear from the record of appeal in what context this request arose.) Teo also asked Per to provide a statement from the Flat's occupiers attesting that only two (and not three) bedrooms had been rented out. Subsequently, on 24 February 2012, the MP wrote to Teo yet again attaching two documents:

(a) The first was a letter dated "5th October 2011-10" (there appears to be a typographical error here), purportedly written on behalf of The Jade's management committee. The letter stated:

> We would like to confirm that the vehicle car number SJH 4098G was parking at our Premises, The Jade from August 2008 to August 2010.

The writer of this letter was not identified or named.

(b) The second document was a letter dated 5 November 2011 by Cahya, who (as mentioned at [3] above) was one of the three Offshore Construction employees registered on the HDB's online portal as an occupier of the Flat. That letter stated:

> At the material time I was employed by Offshore Construction Specialists Pte Ltd (the Company). During my employment with the Company, the Company rented two rooms at Block 621, Bukit Batok Central #07-512 Singapore 650621. The Flat has three rooms. Only 2 rooms were leased to the Company.
>
> We move[d] in [s]ometime in Feb-March 2009, sometime in April 2010 some persons came to the Flat claiming to be from the Environment department and in my conversation with them we told them that we were occupying the whole flat. This was said because we got the impression that the persons are assessing whether the number of persons staying in the Flat are still acceptable for occupational health. The truth is that only two of the rooms were rented by the Company for our occupation and not the whole flat.

Per's subsequent communications with the HDB between September 2012 and June 2013

20 Per then approached Mr Richard Ong, the chairman of the Bukit Batok Citizens' Consultative Committee, and Mr Ho Thian Poh, the People's Action Party Bukit Batok East branch secretary, for help. The two men helped to arrange a meeting between Per and Teo, which took place in September 2012. At that meeting, Per pleaded with Teo and requested a way of resolving the matter amicably. Nothing came out of that meeting, but Teo told Per that another meeting would be scheduled to look into the matter further.

21 Per later contacted the HDB on three occasions to inquire about the further meeting. However, it was not until August 2013, close to one year after the September 2012 meeting, that the further meeting took place. More will be said about the August 2013 meeting later (see [24] below).

Events after the appellants retained Kirpal & Associates

22 On 14 June 2013, the appellants retained Kirpal & Associates ("KSA") to act for them after the MP advised them to seek legal advice. On the same day, KSA wrote to the HDB requesting it to "hold its hands" while it took full instructions from the appellants. On 9 July 2013, KSA wrote to the HDB *refuting* the latter's allegations of breach of s 56(1)(*h*) of the Act and stating the following:

> Kindly note that our clients deny the allegation that they had sublet their entire flat and/or that they were in breach of Section 56(1)(h) of the HDB Act as per your Notice dated 6 October 2010.
>
> In their letter of 28 October 2010, our clients had explained clearly that they had only rented out two out of the three rooms in the Flat and explained the relevant circumstances in full. He had also exhibited the [Sub-Tenancy Agreement] dated 21 January 2009 entered into between himself and the Tenants for the rental of the two rooms.
>
> As such, kindly let us have the basis of your assertion that our clients had sublet their entire flat.
>
> Further, in your letter of 17 July 2010, you have indicated that your *"investigations"* had revealed that our clients had sublet their flat. Kindly confirm the basis and particulars of those

investigations.

You have also informed our clients that you had *"engaged the services of a private investigator to investigate on the Flat"*. Kindly let us have a copy of the Report from the Private Investigator.

Please let us have your response on the above by close of business Monday 15 July 2013. Please let us know if you are prepared to withdraw your Notices and Vesting Order against our clients, failing which, our clients would have to seek redress through the Courts, which we trust will not be necessary.

In the interim, kindly hold your hands in the matter.

[emphasis in original]

23 On 15 July 2013, Teo sent an email to KSA stating the following:

As we need some time to look into your requests, and to update and/or seek the necessary clearances from our Senior Management, we would appreciate it if your clients can agree to hold their hands pending our reply within the next three (3) weeks. Thank you. [emphasis in original omitted]

24 On 1 August 2013, at the HDB's initiation, Per met three of its officers. At that meeting, Per was shown the photographs of the Flat taken by the HDB officers during the inspection on 25 May 2010 (see [6] above), and was asked to explain why there was only one single bed in the bedroom which he said was kept for his family's use. According to Per's affidavit dated 15 May 2014, the explanation which he gave was that his family was in financial difficulties and had to live frugally. He said that he and his wife slept on the floor, while their daughter slept on the bed.

25 On the following day, 2 August 2013, Teo sent an email to KSA informing it of the previous day's meeting. In that email, Teo also stated that the HDB had "agreed to give [Per] time to carefully recap his case, with a view to providing any further relevant information, which he may have earlier overlooked, and which we will submit to our Management for further consideration" [emphasis in original omitted]. Teo requested KSA to hold its hands in the meantime.

26 Another meeting with the HDB was held on 30 October 2013. At that meeting, Teo asked Per to provide documentary proof of overseas trips which he had made from April to July 2010. Thereafter, on 26 December 2013, Per submitted to the HDB copies of the relevant pages of his passport showing the dates on which he had travelled; copies of the relevant pages of his wife's passport were also submitted. It appears that between April and July 2010, the appellants travelled to Taiwan, Korea and Japan. It is not clear from the record of appeal whether they travelled to those countries for work or for leisure.

27 On 28 January 2014, Teo sent an email to Per asking him to clarify where he and his family had been residing from April to July 2010 and to provide supporting evidence. On 21 February 2014, KSA replied stating that for the period from April to July 2010, Per and his family had been residing in the Flat, and that both the appellants were prepared to sign statutory declarations confirming the same.

28 On 28 March 2014, Ms Fiona Foo Wei Ling, a senior legal counsel with the HDB's Litigation and Enforcement Department, sent an email to KSA stating that the HDB would reply "by the end of next week" and requesting KSA to hold its hands in the meantime. The last piece of correspondence was from Teo, who sent the following email ("the final rejection") to KSA on 4 April 2014:

> The flat was compulsorily acquired under Section 56(1)(h) of the Housing and Development Act. We are unable to withdraw the relevant Notices and Vesting Order. The Minister's 2011 decision on the matter is final, as has been conveyed to your clients since 2011. [emphasis in original omitted]

The proceedings below

29 On 15 May 2014, the appellants filed Originating Summons No 440 of 2014 ("OS 440/2014") in the High Court seeking leave to apply for quashing orders in respect of the following:

(a) the HDB's notice of intention dated 6 October 2010 informing the appellants of its intention to compulsorily acquire the Flat (see [10] above);

(b) the HDB's decision of 29 November 2010 to reject the appellants' appeal against the compulsory acquisition of the Flat (see [13] above);

(c) the Minister's decision of 14 March 2011 to reject the appellants' further letter of appeal dated 27 December 2010 (see [15] above); and

(d) the notice of vesting issued by the HDB on 20 April 2011 (see [17] above).

30 The appellants made two broad arguments in the proceedings below. The first was that the HDB's and the Minister's respective decisions had been made illegally and, therefore, also irrationally because the appellants had *in fact* sublet only two bedrooms in the Flat as opposed to the entire Flat. In this regard, the appellants' counsel argued that there was insufficient evidence that his clients had sublet the entire Flat without the HDB's prior written consent. He placed considerable reliance on the Sub-Tenancy Agreement, which stated that only two bedrooms in the Flat were to be rented out. Furthermore, it was submitted (based on Teo's affidavit dated 16 July 2014 explaining the HDB's decision to compulsorily acquire the Flat) that the HDB had misdirected itself when it regarded the appellants' failure to remain in continuous occupation of the Flat as a factor that "converted the legal subletting into an illegal one". The appellants' second broad argument was that there had been a breach of natural justice because the HDB had failed to disclose evidence which it had relied on in arriving at its decision to compulsorily acquire the Flat.

31 In rebutting the appellants' case, the first and second respondents made broadly the same arguments before the Judge. Besides contending that the appellants' case lacked merit, the respondents took a preliminary objection to OS 440/2014, contending that it was filed out of time by more than three years and thus ran afoul of the three-month period stipulated in O 53 r 1(6) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") (reproduced in full at [45] below). On this point, the appellants argued that they had not filed OS 440/2014 out of time. They relied on the High Court's decision in *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 ("*UDL Marine*"), which, they submitted, stood for the proposition that time could start to run later where the respondent's *conduct* indicated a willingness to reconsider its earlier decision. The appellants contended that on the facts of the present case, the HDB's conduct in continuing to engage them despite rejecting their appeal against the compulsory acquisition of the Flat indicated that it was willing to reconsider its decision.

32 To save time and costs, the parties agreed to have the appellants' application for leave to apply for quashing orders and the substantive application for the quashing orders themselves heard on a consolidated basis.

The Judge's decision

The Judge's decision

33 The appellants' arguments were rejected by the Judge, who first held that OS 440/2014 had been filed out of time as the three-month period under O 53 r 1(6) of the Rules of Court had started to run from 14 March 2011, the date on which the Minister's rejection of the appellants' appeal was made known to them. The Judge explained that 14 March 2011 was the relevant starting date because the statutory framework under s 56 of the Act was such that the Minister's decision was final and there could be no further appeal from that decision (see the GD at [42]). Therefore, the appellants, having commenced OS 440/2014 only on 15 May 2014, were out of time by more than three years.

34 The Judge also rejected the appellants' reliance on *UDL Marine* on the basis that the HDB, unlike the respondent in that case, had informed the appellants "on multiple occasions" that the Minister's decision was final, and there was "no reason to suggest that [the] HDB was open to reconsidering its decision" (see the GD at [46]). The Judge held that the HDB's continued engagement with the appellants even after the Minister's decision had been conveyed to them was a "matter of courtesy and should not be construed legalistically as either an extension of the three-month period or a reconsideration of the original decision" (see the GD at [51]). Indeed, the Judge commented, "it would be unreasonable to expect [the] HDB to remain completely silent and not engage the [appellants] at all" (see likewise [51] of the GD), especially since they had sought assistance from the MP, who had then written letters of appeal to the HDB and the Minister on their behalf. Furthermore, the Judge pointed out, the HDB's replies to the appellants and to the letters of appeal by the MP had to be "read in the context of its repeated assertions that the Minister's decision was final and not open to review or challenge" (also at [51] of the GD).

35 In relation to the appellants' argument on illegality/irrationality, the Judge held that the HDB had gathered sufficient evidence to show that the entire Flat had been sublet, and that the appellants' reliance on the Sub-Tenancy Agreement was misplaced. This was because the arrangement as stated in the Sub-Tenancy Agreement might not necessarily have reflected reality. Indeed, the Judge noted, the Sub-Tenancy Agreement might well have been a sham agreement used to create the false impression that only two bedrooms in the Flat had been rented out (see the GD at [64] and [69]–[76]).

36 Lastly, the Judge rejected the appellants' contention that there had been a breach of natural justice. He gave two broad reasons. First, the HDB was not under an obligation to disclose to the appellants all the evidence which it had relied on in deciding to compulsorily acquire the Flat because compelling it to do so could thwart future investigations into illegal subletting and discourage whistle-blowing. Instead, all that the HDB had to do was to inform the appellants of the gist of the case which they had to answer. Secondly, the appellants had in any event been sufficiently informed of the case which they were required to meet, and had not been hampered at all in making meaningful representations to refute the allegations against them (see the GD at [88]–[91]).

37 Dissatisfied with the Judge's refusal to grant them leave to apply for the quashing orders sought, the appellants filed the present appeal.

The parties' arguments on appeal

The appellants' arguments

38 Before us, on the issue of whether OS 440/2014 was filed out of time contrary to O 53 r 1(6) of the Rules of Court ("the O 53 r 1(6) issue"), the appellants argue that the Judge erred in finding that the three-month period under O 53 r 1(6) had been breached and that they had not accounted for

the delay satisfactorily. The appellants contend that the three-month period started to run only from 4 April 2014, the date of the final rejection (see [28] above), and not 14 March 2011, the date on which the Minister's rejection of their appeal was made known to them (see [15] above). They again rely on *UDL Marine* to say that for the purposes of O 53 r 1(6), time may start to run later where the respondent's *conduct* indicates a willingness to reconsider its earlier decision (see [31] above). They argue that this factor was satisfied in the present case, given the HDB's conduct in continuing to engage them after 14 March 2011. On this basis, the appellants assert that since they commenced OS 440/2014 on 15 May 2014, they were well within the three-month period prescribed in O 53 r 1(6). In any event, the appellants submit, they did not file OS 440/2014 out of time because they are able to account for the delay (if there was indeed delay on their part) satisfactorily. They point out that the HDB had asked them for further information after 14 March 2011, and they were still in the process of trying to persuade the HDB to reconsider the compulsory acquisition of the Flat (see [18]–[27] above).

39 With regard to the merits of their substantive application for the quashing orders sought, the appellants argue that the Judge erred in holding that their case lacked merit. In this regard, they contend, as they did in the court below, that the quashing orders which they seek ought to be granted because: (a) the HDB and the Minister acted illegally and, therefore, also irrationally in deciding to compulsorily acquire the Flat; and (b) there was a breach of natural justice. With regard to the point on illegality/irrationality, the appellants yet again deny that they had sublet the whole Flat, and argue that there was therefore no question of their having to seek the HDB's prior written consent to the subletting of the entire Flat. In any event, the appellants submit, there is insufficient evidence to prove that they had sublet the whole Flat. They reiterate that they had sublet only two bedrooms, and for that, they had obtained the HDB's prior written consent; they had merely been careless in leaving the bedroom meant for their family's use unlocked, resulting in it being occupied without their permission. They further argue (based on Teo's affidavit dated 16 July 2014 explaining the HDB's decision to compulsorily acquire the Flat (see [30] above)) that the HDB erred in taking into account their failure to remain in continuous occupation of the Flat as that is not a factor which is expressly provided for under s 56(1)(*h*) of the Act. As for their allegation of breach of natural justice, the appellants say that they were not given the following evidence (collectively, "the undisclosed items") and were thus not afforded a chance to respond to or controvert that evidence:

(a) the anonymous tip-off which the HDB received on 23 December 2009 (see [4] above);

(b) Sayeh's statement dated 25 May 2010 (see [7] above);

(c) the photographs taken by the HDB officers during the inspection of the Flat on 25 May 2010 (see [6] above); and

(d) the Private Investigator's report (see [4] above).

The respondents' arguments

40 As in the case of the proceedings below, the first and second respondents have made broadly the same arguments in this appeal. With regard to the O 53 r 1(6) issue (as defined at [38] above), they contend that the Judge was right in holding that the three-month period laid down in O 53 r 1(6) of the Rules of Court should be reckoned from 14 March 2011, the date of the Minister's rejection of the appellants' appeal, and that the appellants were therefore severely out of time when they filed OS 440/2014 on 15 May 2014. In any event, the respondents submit, the appellants have not accounted for the delay satisfactorily because they chose to pursue non-legal avenues of seeking a remedy (such as approaching the MP for help and continuing to write to the HDB after the Minister's

rejection of their appeal) and only appointed KSA at a late stage in June 2013. Furthermore, the HDB, in its correspondence with the appellants, had already stated clearly that the Minister's decision was final and was not open to review or challenge.

41 With regard to the merits of the appellants' substantive application for the quashing orders sought, the respondents argue that the Judge rightly found that the appellants' case lacked merit. They submit that the HDB and the Minister did not act illegally or irrationally in deciding to compulsorily acquire the Flat because there was sufficient evidence that the entire Flat had been sublet by the appellants without the HDB's prior written consent. Therefore, a precedent fact under s 56(1)(*h*) of the Act had been made out, such that the HDB was empowered to compulsorily acquire the Flat. The respondents also contend that the HDB was under no obligation to disclose the undisclosed items (as defined at [39] above) to the appellants because they knew the gist of the case which they had to answer and were not at all prejudiced in their ability to make meaningful representations. Indeed, the respondents argue, the appellants were able to put forth detailed representations in their bid to controvert the HDB's finding that the entire Flat had been sublet without its prior written consent. The respondents also point out that compelling the HDB to disclose the undisclosed items could thwart future investigations into illegal subletting and discourage whistle-blowing, which would be against the public interest. In this regard, Ms Agnes Lim, a deputy director in the Ministry of National Development's Housing Division, said in her affidavit dated 16 July 2014 (at para 16):

> HDB has a major task in effectively enforcing its rules and deterring unauthorised subletting. … In the course of enforcement proceedings, it is not always possible for HDB to disclose its sources of information, its *modus operandi*, or the precise evidence yielded by its investigations, as this would undermine future investigations and show wrongdoers how to "game" the system. Nonetheless, before a flat is compulsorily acquired for unauthorised subletting, sufficient information is disclosed to the flat owner so that he can respond to the assertion of unauthorised subletting.

The issues arising in this appeal

42 It will be apparent from the parties' respective arguments as set out above that the following issues arise for our consideration in this appeal:

(a) First, there is the O 53 r 1(6) issue – *viz*, was the three-month period stipulated in O 53 r 1(6) of the Rules of Court breached? This necessitates determining when the three-month period started to run on the facts of this case, and, if the three-month period had already expired when OS 440/2014 was filed, whether the appellants satisfactorily accounted for the delay.

(b) Secondly, did the HDB and/or the Minister act illegally and/or irrationally in deciding to compulsorily acquire the Flat? This necessitates determining whether the whole Flat had *in fact* been sublet by the appellants without the HDB's prior written consent.

(c) Thirdly, did the HDB breach the appellants' right to natural justice in refusing to disclose to them the undisclosed items which it relied on in deciding to compulsorily acquire the Flat?

43 Besides the three issues mentioned in the preceding paragraph, there is another issue which was neither raised in the parties' submissions nor dealt with by the Judge, but which nonetheless needs to be addressed, namely, whether the second limb of s 56(6) of the Act – *viz*, the phrase "the decision of the Minister shall be final and not open to review or challenge on any ground whatsoever"

– bars the court from reviewing the Minister's decision. This issue is pertinent as it concerns the High Court's jurisdiction to hear OS 440/2014 and, as a corollary, this court's jurisdiction to hear the present appeal.

44 We will first deal with the O 53 r 1(6) issue because, as will be explained below, it goes towards determining whether this court has the jurisdiction to hear the present appeal to begin with. We will thereafter deal with the issue of whether the second limb of s 56(6) of the Act bars the court from reviewing the Minister's decision. Like the O 53 r 1(6) issue, the potential bar under the second limb of s 56(6) is a matter that concerns the jurisdiction of this court. Finally, we will address the issues stated at [42(b)] and [42(c)] above, which pertain to the merits of the appellants' substantive application for the quashing orders sought.

Our decision

Was there a breach of O 53 r 1(6) of the Rules of Court?

The law

45 Order 53 r 1(6) of the Rules of Court lays down the time frame for applying for leave to seek a quashing order as follows:

> Notwithstanding the foregoing, *leave shall not be granted to apply for a Quashing Order* to remove any judgment, order, conviction or other proceeding for the purpose of its being quashed, ***unless the application for leave is made within 3 months after the date of the proceeding or such other period (if any) as may be prescribed by any written law*** or, *except where a period is so prescribed, the delay is accounted for to the satisfaction of the Judge* to whom the application for leave is made; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired. [emphasis added in italics and bold italics]

It should be noted that some of the cases which we will discuss in the ensuing paragraphs on the O 53 r 1(6) issue concern O 53 r 1(6) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), rather than O 53 r 1(6) of the Rules of Court as defined at [31] above. As O 53 r 1(6) is worded in substantially the same way in each of these Revised Editions, we will hereafter refer to the provision generically as "O 53 r 1(6)" for short.

46 It can be readily seen from the wording of O 53 r 1(6) that as a general rule, an application for leave to seek a quashing order should be made within either: (a) three months from the date of the decision or proceeding sought to be quashed; or (b) such other period (if any) as may be prescribed by any written law. What is less clear is whether the words "the delay is accounted for to the satisfaction of the Judge" ("the delay exception") applies to *both* of these time limits. There is no question that this exception applies where the relevant time limit is three months from the date of the decision or proceeding concerned. But, there is some ambiguity over whether it applies where the relevant time limit is "prescribed by … written law". On the one hand, it would appear, from the wording of O 53 r 1(6) itself, that the delay exception is *not* applicable where the relevant time limit is "prescribed by … written law". This is because the phrase "*except* where a period is so prescribed" [emphasis added] appears immediately *before* the delay exception. Moreover, it can be said that legislation passed by Parliament setting out *specific* time limits should take precedence over the time limits stipulated in the Rules of Court, which are meant to be of *general* application to civil proceedings in our courts, and therefore, should take precedence over the delay exception provided

for in O 53 r 1(6) as well. On the other hand, however, there appears to be no reason why the delay exception should not apply where the relevant time limit is prescribed by written law because, arguably, that statutorily-prescribed time limit overrides only the three-month time limit stipulated in O 53 r 1(6), but not the delay exception. We will not come to a firm decision as to which of these two interpretations of O 53 r 1(6) is to be preferred since no submissions on this issue were made before us; and in any case, there is no dispute between the parties that the applicable time limit for the purposes of this appeal is "3 months after the date of the [decision]".

47 It is imperative to determine whether the aforesaid three-month time limit was complied with in the present case because if it was not, the High Court would have no jurisdiction to hear OS 440/2014, and as a corollary, this court would have no jurisdiction to hear this appeal. In *Wong Kin Hoong and another v Ketua Pengarah Jabatan Alam Sekitar and another* [2013] 4 MLJ 161, the Federal Court of Malaysia, in commenting on Malaysia's equivalent of O 53 r 1(6), stated at [30]:

> … [T]he time frame in applying for judicial review prescribed by the [the Malaysian equivalent of the Rules of Court] is fundamental. It goes to jurisdiction and once the trial judge ha[s] rejected the explanation for the delay for extension of time to apply for judicial review, it follows that the court no longer has the jurisdiction to hear the application for leave for judicial review. Whether the application has merits or not, is irrelevant.

48 In passing, we note that there is no specific time limit prescribed for seeking leave to apply for a mandatory order or a prohibiting order (see *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 ("*Chiu Teng*") at [37], *Chai Chwan v Singapore Medical Council* [2009] SGHC 115 ("*Chai Chwan*") at [10] and *Singapore Civil Procedure 2015* (G P Selvam ed) (Sweet & Maxwell, 2015) at vol 1, para 53/1/8). An explanation for this has been advanced in *Mallal's Supreme Court Practice* (Tan Sri Datuk Chang Min Tat ed) (Malayan Law Journal, 2nd Ed, 1983) as follows (at vol 1, para 53/1A/1):

> Time: No time limit has been set for [a mandatory order], or [a] prohibition because it is expected that any applicant who requires a particular duty to be performed or not to be performed can be expected to apply for the order for the performance of that duty or the prohibition of that duty at an early stage. Since [a quashing order] can only be applied for at the conclusion of the proceedings, it will make for an early determination of the proceedings if a time limit is set for the application.

49 This does not, however, mean that a party applying for leave to commence judicial review proceedings for a mandatory order or a prohibiting order is given *carte blanche* to bring its application as late as it wishes; instead, the application must still be brought within a reasonable time. As Professor Jeffrey Pinsler notes in *Principles of Civil Procedure* (Academy Publishing, 2011) at para 25.016:

> No time limit is prescribed for an application for a mandatory or prohibitory order. However, the court is unlikely to exercise its discretion in favour of the applicant [seeking leave] unless the importance of the remedy to him is reflected by the urgency of his application. It follows that an application for a mandatory order or a prohibitory order must be brought within a reasonable time. …

50 A case which illustrates the rule that an application for leave to seek a mandatory order should be brought within a reasonable time is the decision of this court in *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR(R) 568 ("*Teng Fuh Holdings*"). There, the court refused to grant the applicant leave to apply for *both* a mandatory order and a quashing order on account of its

delay even though there was no statutorily-prescribed time limit for applying for leave to seek a mandatory order (see *Teng Fuh Holdings* at [23] and [42]). This was noted by Lai Siu Chiu J in *UDL Marine* (cited earlier at [31] above), who held at [36]–[37]:

> 36 Order 53 r 1(6) … only refers to applications for leave to apply for quashing orders. JTC [the respondent in *UDL Marine*], however, submitted that an application for leave to apply for a mandatory order could also be precluded on the ground of delay. In support of this submission, JTC cited a passage from *O'Reilly v Mackman* [1983] 2 AC 237 in which Lord Diplock stated the following (at 280–281):
>
> > … The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of its decision-making powers for any longer than is absolutely in fairness to the person affected by the decision. …
>
> The AG took a similar view. The AG referred to *Teng Fuh Holdings*. In *Teng Fuh Holdings*, the Court of Appeal affirmed a dismissal of an application for leave to apply for a quashing order and a mandatory order on the ground that the application was made out of time (*Teng Fuh Holdings* at [23] and [42]).
>
> 37 My view was that the Court of Appeal in *Teng Fuh Holdings* accepted, at least impliedly, that a leave application for a mandatory order should also be made without undue delay. The leave application for a mandatory order in *Teng Fuh Holdings* should have been allowed if the court considered that such applications could be made regardless of any delay, given that the court commented that a serious argument could have been made for leave to be granted if the application had been made in time (*Teng Fuh Holdings* at [42]). I should add, however, that the three-month period prescribed for quashing orders is not necessarily indicative of whether a leave application for a mandatory order was made with undue delay since O 53 r 1(6) does not apply to mandatory orders.

51 For the purposes of calculating the three-month period stipulated in O 53 r 1(6), time generally starts to run from the date of the decision sought to be impugned (see *Teng Fuh Holdings* at [16]–[17]), or, where the decision is borne out of a multiple-step decision process, from the date of the final step in that process (see *Chiu Teng* at [36]). But, this is not an inflexible or unyielding rule. Time may start to run later where the respondent's *conduct* indicates a willingness to reconsider its earlier decision, and in cases where there is delay, it is always open to the applicant to attempt to persuade the court that it has a satisfactory explanation for the delay. (However, as we mentioned earlier at [46] above, it *may* be that the delay exception does not apply where the applicable time limit is prescribed by written law, as opposed to the three-month period stipulated in O 53 r 1(6).)

52 In *UDL Marine*, a decision which the appellants rely on, the court permitted time to start running later on the ground that the respondent's *conduct* indicated a willingness to reconsider its earlier decision. The respondent in that case, Jurong Town Corporation ("JTC"), leased land to UDL Marine (Singapore) Pte Ltd ("UDL"). UDL applied to renew the lease, but was turned down. JTC, which informed UDL of this by way of a letter dated 20 November 2009, said that its decision was "final". Later, JTC wrote to UDL informing it that the Economic Development Board and itself (JTC) would jointly review UDL's business plans and give their joint assessment in due course. On 19 May 2010, JTC wrote to UDL informing it that the joint assessment had been concluded and did not support the renewal of the lease. UDL then applied to the High Court for leave to seek (*inter alia*) a quashing order in respect of JTC's decision. In deciding whether the three-month period stipulated in O 53 r 1(6) had been breached, Lai J held that time started to run from JTC's later rejection letter of

19 May 2010 instead of from the first rejection letter of 20 November 2009 – this was because even though JTC indicated in its first rejection letter that its decision was "final", its later *conduct* was a clear indication that it was open to *reconsidering* its decision.

53 As for the point on whether, in cases where there is delay, the applicant has satisfactorily accounted for the delay, this is necessarily a fact-sensitive inquiry. The circumstances of each case will be distinct. As Belinda Ang Saw Ean J noted in *Chai Chwan* at [14]:

> The starting point is that whenever there is a failure to act within the period of three months prescribed in O 53 r 1(6) …, there is a delay. The question of whether the period of the delay can be categorised as unduly excessive on the basis of being inexcusable is a question of fact for the court. Each case is infinitely varied and distinctly fact-sensitive. Consequently, there is no set formula to use in deciding whether a satisfactory account of the delay has been given. The judge hearing the application will be able to assess objectively the grounds of delay at the leave stage. The lapse of time must be explained fully by the applicant so that the court is able to satisfy itself that the delay has been adequately accounted for. In other words, notwithstanding the lateness of the application, the court could entertain the application for leave to apply for judicial review by extending the time where it thought that there was valid reason to exercise the power.

54 In this regard, the court should grant extensions of time in a principled manner and should refuse such an extension where satisfactory reasons are lacking. We set out below some cases that illustrate this:

(a) In *Chai Chwan*, Belinda Ang J held that the applicant had satisfactorily accounted for his three-year delay in commencing judicial review proceedings because he could only form a view of the subject matter of those proceedings after the disclosure of certain information by the respondent.

(b) In *Zheng Jianxing v Attorney-General* [2014] 3 SLR 1100, where there was a delay of more than seven years before the applicant sought leave to apply for a quashing order, Tay Yong Kwang J did not find the applicant's explanation of being a layperson who was without the benefit of legal advice sufficient to account for the delay.

(c) In *Regina v Stratford-on-Avon District Council and Another, ex parte Jackson* [1985] 1 WLR 1319, the English Court of Appeal held that there was "good reason" for the applicant's delay as her delay had been occasioned by her applying for and obtaining legal aid, and by her attempting to persuade the Secretary of State for the Environment to intervene, albeit unsuccessfully.

(d) Similarly, in *Regina v Secretary of State for the Home Department, ex parte Ruddock* [1987] 1 WLR 1482, the court held that the applicant's delay had been satisfactorily accounted for because the applicant was not made aware of the decision sought to be impugned until a late stage.

55 Applicants can also expect a certain measure of latitude from the court where judicial review proceedings have been delayed by serious and genuine attempts to resolve the dispute without litigation. As the English Court of Appeal explained in *Regina v Hammersmith and Fulham London Borough Council, ex parte Burkett* [2001] Env LR 684 at [14]:

> Judicial review is in principle a remedy of last resort. It follows, as it always does when a potential [applicant] for judicial review expeditiously seeks a reasonable way of resolving the

issue without litigation, that the court will lean against penalising him for the passage of time and will where appropriate enlarge time if the alternative expedient fails.

Application of the law to the facts

56 With these principles in mind, we move to apply them to the facts of the present case. Here, there are *prima facie* four distinct dates from which time could be said to have started to run for the purposes of O 53 r 1(6) – namely, 6 October 2010, 29 November 2010, 14 March 2011 and 20 April 2011, these being the respective dates on which the decisions that the appellants seek to impugn were made (see [29] above). However, as mentioned at [51]–[52] above, time may start to run later where the respondent's *conduct* indicates a willingness to reconsider its earlier decision (see *UDL Marine*). In this regard, we note that the HDB had informed the appellants in writing on various occasions that the Minister's decision was final and was not open to review or challenge. However, we are of the view that this was a mere reiteration of the HDB's and the Minister's respective legal positions under the statutory regime set out in s 56 of the Act, and did not necessarily indicate that the HDB and the Minister were not at all open to reconsidering the decision to compulsorily acquire the Flat. On the contrary, the HDB's course of conduct *as a whole* demonstrated that it was willing to reconsider its decision, more so than JTC in *UDL Marine*. As highlighted earlier in our summary of the background facts, the HDB was engaged in a long-drawn process of clarifying and eliciting more information from the appellants, and met Per on many occasions from the time of the letter dated 14 March 2011 communicating the Minister's rejection of the appellants' appeal right up to the time of the final rejection on 4 April 2014. Indeed, even as late as 2 August 2013, the HDB was prepared to give Per more time to "carefully recap his case, with a view to providing any further relevant information, which he may have earlier overlooked, and which we will submit to our Management for further consideration" [emphasis in original omitted] (see [25] above). To recapitulate:

(a) On 9 September 2011, the HDB asked Per for information as to why he had parked his car at his sister-in-law's condominium, and also requested him to provide a statement from the Flat's occupiers attesting that only two bedrooms had been rented out (see [19] above).

(b) The HDB met Per on three occasions after sending the letter of rejection dated 14 March 2011, namely, in September 2012, and thereafter, in August and October 2013 (see [20], [21], [24] and [26] above).

(c) As we have just mentioned earlier in this paragraph, the HDB sent an email to KSA on 2 August 2013 stating that it would give Per more time to "carefully recap his case" [emphasis in original omitted].

(d) The HDB wrote to Per on 28 January 2014 requesting him to clarify where he and his family had been residing from April to July 2010 (see [27] above).

57 In the light of the above circumstances, we agree with the appellants that the three-month period stipulated in O 53 r 1(6) should be reckoned only from the date of the last correspondence, *ie*, 4 April 2014, which was the date of the final rejection (see [28] above). The appellants were therefore well within the prescribed three-month period when they commenced OS 440/2014 on 15 May 2014.

58 In any event, even if we were to hold that time should start to run from 14 March 2011 as the respondents contend (see [40] above), we are of the view that the appellants have satisfactorily accounted for the delay – *viz*, they were continuing to engage the HDB in their attempts to persuade it to change its mind, and thus could not be expected to commence litigation. Indeed, it would have

been contrary to the spirit implicit in the appellants' attempt to resolve the matter amicably for them to have also concurrently commenced litigation. That would have been an utterly unwise move. We stress that this is not a case where the applicants (*ie*, the appellants) allowed the matter to rest and then, after a considerable lapse of time, sought leave to commence judicial review proceedings.

59 The respondents contend that the appellants have not satisfactorily accounted for the delay (as the respondents see it) because the appellants chose to pursue non-legal avenues of seeking a remedy and appointed KSA to act for them only at a late stage in June 2013. Furthermore, the HDB, in a number of letters to the appellants between July 2011 and May 2012, had already clearly stated that the Minister's decision rejecting the appellants' appeal was final and was not open to review or challenge.

60 We do not share the respondents' view for the following reasons:

(a) We are unable to see what was wrong with the appellants seeking to pursue non-legal avenues of obtaining a remedy (such as approaching the MP for help and continuing to attempt to persuade the HDB to change its mind even after the Minister's rejection of their appeal). The appellants probably felt that this was a better approach and they cannot be faulted for taking this view. Indeed, as we have stated above (at [55]), a certain measure of latitude should be granted to applicants who seek to resolve disputes amicably without resorting to judicial review proceedings.

(b) What the appellants wanted was for the HDB to reconsider its decision to compulsorily acquire the Flat. The HDB could have told the appellants firmly that its decision would not be altered under any circumstances. Instead, as indicated at [56] above, it entertained further representations from the appellants after the Minister's rejection of their appeal.

(c) With regard to the point that the appellants appointed KSA to act for them only at a late stage in June 2013, again, we do not see how they can be faulted for this, given that they did not want to adopt a confrontational approach. As we have just mentioned, the appellants were still attempting to resolve matters with the HDB amicably by non-legal means first and it would have been premature to involve lawyers.

(d) As for the respondents' last objection that the HDB had already told the appellants in writing that the Minister's decision was final and was not open to review or challenge, we have earlier expressed our view that this was but a mere reiteration of the legal position under s 56 of the Act (see [56] above). Moreover, the HDB's conduct as a whole indicated that it was willing to reconsider its earlier decision. We have already identified the relevant conduct on the HDB's part that led us to this conclusion (see likewise [56] above) and we do not propose to repeat those points here.

61 In the light of the above, we are unable to agree with the Judge's assessment that there was "no reason to suggest that [the] HDB was open to reconsidering its decision" (see the GD at [46]). The Judge therefore erred in holding that the appellants were in breach of O 53 r 1(6). Next, we move on to deal with the issue of whether the second limb of s 56(6) of the Act bars the court from reviewing the Minister's decision. As mentioned earlier, this issue likewise concerns the jurisdictional question of whether we can even examine the legality of the Minister's decision to begin with.

Does the second limb of s 56(6) of the Act bar the court from reviewing the Minister's decision?

62 For ease of reference, we set out again s 56(6) of the Act, which we reproduced earlier at [11] above:

> (6) Any appeal by any owner or interested person aggrieved by the decision of the Board shall be made to the Minister within 28 days after the date of service of such decision on the owner or interested person and *the decision of the Minister shall be final and not open to review or challenge on any ground whatsoever*. [emphasis added]

63 The second limb of s 56(6), which is highlighted in italics in the above quotation, is what is commonly known in administrative law as an ouster clause. Put simply, ouster clauses (also known as privative, preclusive, limitation or exclusion clauses) are statutory provisions which *prima facie* prohibit judicial review of the exercise of the discretionary powers to which they relate (see Mark Elliot *et al*, *Beatson, Matthews and Elliott's Administrative Law: Text and Materials* (Oxford University Press, 4th Ed, 2011) at para 15.6.1). Such clauses may be worded differently and may appear in different guises, but their broad import is clear: they seek to oust the court's jurisdiction to carry out judicial review (see Matthew Groves & H P Lee, *Australian Administrative Law: Fundamentals, Principles and Doctrines* (Cambridge University Press, 2007) at p 346). Section 56(6) of the Act is not the only clause of this nature in our statute books. Ouster clauses are also found in various other statutes (see, *eg*, s 47 of the Industrial Relations Act (Cap 136, 2004 Rev Ed), s 14(5) of the Employment Act (Cap 91, 1996 Rev Ed), s 79(3) of the Income Tax Act (Cap 134, 2008 Rev Ed), s 5(3) of the Land Acquisition Act (Cap 152, 1985 Rev Ed), s 22(7) of the Planning Act (Cap 232, 1998 Rev Ed) and s 18 of the Maintenance of Religious Harmony Act (Cap 167A, 2001 Rev Ed)).

64 Our courts have viewed ouster clauses with circumspection and have declined to give effect to them on several occasions (see, *eg*, *Re Application by Yee Yut Ee* [1977–1978] SLR(R) 490 at [18] and [31], *Stansfield Business International Pte Ltd v Minister for Manpower (formerly known as Minister for Labour)* [1999] 2 SLR(R) 866 at [21]–[22], *Re Raffles Town Club Pte Ltd* [2008] 2 SLR(R) 1101 at [5] and [8] and *Teng Fuh Holdings* (cited earlier at [50] above) at [37]–[38]; but *cf Borissik Svetlanta v Urban Redevelopment Authority* [2009] 4 SLR(R) 92 at [29]).

65 We further note that arguments have been made by academics and other commentators against enforcing ouster clauses on the ground that in so far as such clauses seek to oust the court's jurisdiction to review *justiciable* matters (as opposed to non-justiciable matters, for which ouster clauses merely declare accepted existing limits on judicial review (see Hilaire Barnett, *Understanding Public Law* (Routledge-Cavendish, 2009) at p 194)), they may be regarded as being incompatible with the rule of law because it should be within the court's purview to declare the legal limits of discretionary powers (see Thio Li-ann, "Law and the Administrative State" in *The Singapore Legal System* (Kevin Y L Tan ed) (Singapore University Press, 2nd Ed, 1999) ch 5 at p 195). Some commentators have also suggested that ouster clauses, in seeking to take away the judicial power of the court where its supervisory jurisdiction is concerned, are in violation of Art 93 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution") as well as the principle of separation of powers (see Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at para 10.218 and Chan Sek Keong, "Judicial Review – From Angst to Empathy: A Lecture to Singapore Management University Second Year Law Students" (2010) 22 SAcLJ 469 at para 19). Article 93 of the Constitution provides:

> **Judicial power of Singapore**
>
> **93**. The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by any written law for the time being in force.

66 In their submissions to this court, the respondents did not rely on the ouster clause in the second limb of s 56(6) of the Act and therefore did not make arguments on its efficacy. Instead, they were content to confine themselves to arguments on the substantive merits of the appeal. In the absence of arguments by the respondents, we refrain from coming to a *firm* conclusion on whether this ouster clause bars us from reviewing the Minister's decision.

67 Our analysis which follows thus proceeds on the *assumption* that the second limb of s 56(6) of the Act does not bar us from reviewing the Minister's decision, which concerns issues that do not appear to us to be of a nature which may be regarded as non-justiciable. On the contrary, these issues appear to us to be eminently justiciable.

Did the HDB and/or the Minister act illegally and/or irrationally in deciding to compulsorily acquire the Flat?

68 Before we deal with the substantive arguments as to whether the HDB and/or the Minister acted illegally and, therefore, also irrationally in deciding to compulsorily acquire the Flat, it is apposite to first trace the legislative history of s 56(1)(*h*) of the Act and the relevant policy considerations undergirding that provision.

Legislative history and policy of s 56(1)(h) of the Act

69 As we mentioned at the outset of this judgment, s 56(1)(*h*) is one of 14 grounds listed in s 56(1) under which the HDB is empowered to compulsorily acquire a flat. We have also noted that adherence to these 14 grounds is a *quid pro quo* for subsidised public housing.

70 The first 11 grounds set out in s 56(1) – *viz*, ss 56(1)(*a*) to 56(1)(*k*) (including s 56(1)(*h*) itself) – were enacted in 1975 *vide* the Housing and Development (Amendment) Act 1975 (Act 13 of 1975) ("Act 13/1975"). Broadly speaking, these provisions are aimed at ensuring that subsidised flats, which are constructed and leased out by the HDB and which are limited in supply, are allotted to and remain in the hands of deserving Singapore citizens and Singapore permanent residents. Thus, a flat may be compulsorily acquired if, for instance: (a) the owner and his/her spouse (if any) cease to occupy the flat (see s 56(1)(*a*)); (b) the flat has been used without the HDB's prior written consent for any purpose other than that permitted under the lease (see s 56(1)(*c*)); (c) the owner made misrepresentations to the HDB in purchasing the flat (see ss 56(1)(*f*) and 56(1)(*g*)); or (d) the owner ceases to be a Singapore citizen or Singapore permanent resident (see s 56(1)(*j*)). As the then Minister for Law and National Development, Mr E W Barker, said during the second reading of the Bill which led to Act 13/1975 (*viz*, the Housing and Development (Amendment) Bill 1975 (Bill 11 of 1975)), these provisions were introduced (see *Singapore Parliamentary Debates, Official Report* (27 August 1975) vol 34 at col 1069):

> In order to ensure that [HDB] flats are in the hands of those who *deserve* them and to avoid frustration by those on the [HDB's] waiting list (at the moment there is a waiting list of about 100,000 applications) … [emphasis added]

71 In a similar vein, Tan Sook Yee, Tang Hang Wu and Kelvin F K Low had this to say in *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at para 24.70:

> … HDB public housing is a 'privilege' in as much as it comes at relatively low cost and there are others who are on the waiting list for such housing.

72 In 1986, three further grounds for compulsory acquisition were added to s 56(1) – *viz*, ss 56(1)

(*l*) to 56(1)(*n*) – *vide* the Housing and Development (Amendment) Act 1986 (Act 21 of 1986) as a specific response to three concerns. The first was that of owners who refused to comply with their obligation to pay back grants given by the Government for the purchase of their flats (see s 56(1)(*l*)). The second was that of irresponsible owners who threw out "killer litter" (essentially, articles thrown from the windows and/or balconies of upper-storey flats, which hurt or even kill passers-by below) (see s 56(1)(*m*)). The third was the growing trend of using HDB flats to house illegal immigrants (see s 56(1)(*n*)).

73 In the present case, only s 56(1)(*h*) is in issue as this is the ground relied on by the HDB to compulsorily acquire the Flat. To recapitulate, s 56(1)(*h*), which we set out earlier at [9] above, provides:

> **Board may compulsorily acquire property sold subject to the provisions of this Part**
>
> **56.**—(1) The Board may compulsorily acquire any flat, house or other living accommodation sold subject to the provisions of this Part, whether before or after 2nd June 1975 —
>
> …
>
> (*h*) *if the owner thereof assigns, underlets or parts with the possession of the same or any part thereof without obtaining the prior written consent of the Board as required by the lease*;
>
> …
>
> [emphasis added]

74 The parties are in agreement that the term "underlets" in s 56(1)(*h*) is synonymous with the word "sublets". Although illegal subletting is a distinct ground for compulsory acquisition under s 56(1)(*h*), it should be noted that there is considerable overlap between this provision and several others. Indeed, in a situation of illegal subletting, other grounds under s 56(1) may be engaged as well, for instance: (a) s 56(1)(*a*) (if the owner and his/her spouse, if any, cease to occupy the flat); (b) s 56(1)(*c*) (if the flat is used without the HDB's prior written approval for any purpose other than that permitted by the lease); and (c) s 56(1)(*d*) (if the owner permits any person other than an authorised occupier (as defined in s 2(1) of the Act) to reside or stay in the flat).

75 The rule against unauthorised subletting is also reflected in cl 2(2)(d) of the section headed "Special Covenants and Conditions" in the memorandum of lease entered into between the appellants and the HDB when the Flat was purchased. That clause reads:

> 2 …
>
> (2) The Lessee further covenants with and undertakes to the [HDB] that he will not without the prior written consent of the [HDB] (whose decision in this respect shall be final in each case) do any of the following things or acts:
>
> …
>
> (d) sell transfer assign mortgage or charge the Flat or any interest therein or *underlet* the Flat or part with or share with any person other than the authorised occupiers the actual or legal possession or occupation of the Flat or any part thereof …

…

…

[emphasis added]

76 The HDB's stance on unauthorised subletting is aptly encapsulated in the following statement made in Parliament in July 1993 by the then Minister for National Development, Dr Richard Hu Tsu Tau (see *Singapore Parliamentary Debates, Official Report* (30 July 1993) vol 61 at col 379; for similar statements, see: (a) *Singapore Parliamentary Debates, Official Report* (12 October 1993) vol 61 at cols 563–564 (Minister of State for National Development, Mr Lim Hng Kiang); (b) *Singapore Parliamentary Debates, Official Report* (27 April 2010) vol 87 at cols 208–210 (Minister of State for National Development, Ms Grace Fu Hai Yien); and (c) *Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 at cols 2004–2006 (Senior Parliamentary Secretary for National Development, Dr Mohamad Maliki Bin Osman)):

> The public housing programme and its associated policies are designed to provide affordable housing to Singaporeans. HDB flats are therefore, intended for owner-occupation and not as an investment to generate rental income.
>
> *It is for this reason that HDB lessees [owners] are not normally allowed to sublet their entire flats. Subletting of whole flats is permitted by HDB only under special circumstances* such as when lessees have to study or work overseas for extended periods. HDB's approval is required for the subletting of entire flats.
>
> The policy to allow subletting of rooms in HDB flats was implemented in 1973. The objective was to allow HDB lessees with small families to sublet spare rooms in their flats. This is to encourage more productive use of space. However, lessees must continue to live in their flats. Besides fulfilling the owner-occupation condition, this requirement also has the advantage of ensuring that tenants abide by the subletting conditions and do not become a nuisance to their neighbours.
>
> The policy on owner-occupation is still necessary for the reasons stated. The subletting conditions are designed to support this policy.
>
> [emphasis added]

77 It will be readily appreciated from the above passage that the HDB will permit an entire flat to be sublet only in "special circumstances". If permission is given to an owner to sublet rooms in his/her flat, he/she would still be required to live in the flat to ensure that the sub-tenants do not cause nuisance to their neighbours. Some of the specific examples of nuisance which have been highlighted in Parliament in this regard are "noise nuisance" (see *Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 at col 2005 (Senior Parliamentary Secretary for National Development, Dr Mohamad Maliki Bin Osman)), and the possibility that flats could be converted into dormitories for foreign workers and become overcrowded as a result (see *Singapore Parliamentary Debates, Official Report* (10 January 2011) vol 87 at col 2005 (Member of Parliament for Jurong Group Representation Constituency, Mdm Halimah Yacob) and *Singapore Parliamentary Debates, Official Report* (31 October 2002) vol 75 at col 1392 (Minister for National Development, Mr Mah Bow Tan)).

78 Clause 3.6 of the HDB's Terms and Conditions for Subletting of Bedroom(s), published on the HDB's InfoWeb in January 2010, similarly reflects this position. It reads:

The owners and all authorized occupiers must continue to reside in the flat at all times during the period of subletting.

Application to the facts

79 With this background in mind, we move to deal with the appellants' contention that the HDB and/or the Minister acted illegally and, therefore, also irrationally in deciding to compulsorily acquire the Flat. To recapitulate, the appellants have made two broad arguments in this regard:

(a) First, they deny that they sublet the whole Flat without the HDB's prior written consent, and assert that there was insufficient evidence to prove this allegation against them. They reiterate that they did not sublet the whole Flat, and that they were merely careless in leaving the bedroom meant for their family's use unlocked, resulting in it being occupied without their permission. They also rely on the Sub-Tenancy Agreement to argue that they sublet only two bedrooms in the Flat as opposed to the entire Flat.

(b) Second, the appellants submit that the HDB erred in taking into account their failure to remain in continuous occupation of the Flat as that is not a factor which is expressly provided for under s 56(1)(*h*).

80 With regard to the appellants' first argument, we find it to be contrived and wholly without merit. Indeed, we are of the view that the appellants did sublet the whole Flat without the HDB's prior written consent for the following reasons:

(a) First, as we mentioned earlier in setting out the background facts, the HDB officers who carried out the inspection of the Flat on 25 May 2010 found a variety of *objective* indications which strongly showed that the whole Flat had been illegally sublet (see [5]–[6] above). To reiterate, these are as follows:

(i) there were ashtrays on the table in the living room, which, as the HDB officers rightly pointed out, is odd because ordinarily, a family with a young child would not allow smoking in the home;

(ii) all three bedrooms were each occupied by one foreign worker, with only one single bed in each bedroom;

(iii) each bedroom was sparsely furnished, and there were no personal effects in any of the rooms to suggest that a family of three resided in the Flat; and

(iv) the foreign workers hung their washed uniforms in front of the refrigerator and above the kitchen worktop.

We checked this account against the photographs taken by the HDB officers during their inspection of the Flat, and are satisfied that there was sufficient evidence showing that the whole Flat had been sublet without the HDB's prior written consent. Indeed, the evidence gathered by the HDB officers was strong, if not almost conclusive, proof of this.

(b) Secondly, Sayeh (who was not an authorised occupier as defined in s 2(1) of the Act) himself admitted in his statement of 25 May 2010 to the HDB officers who inspected the Flat that the appellants were not residing there (see [7] above). We note that another occupant, Cahya (who was an authorised occupier), subsequently provided a statement dated 5 November 2011

(see [19(b)] above) which purports to contradict Sayeh's earlier statement. In his 5 November 2011 statement, Cahya said that he told the HDB officers who inspected the Flat that he and his co-workers were "occupying the whole flat" because, given that the HDB officers identified themselves as being from the "Environment department", he "got the impression that the [officers were] assessing whether the number of persons staying in the Flat [was] still acceptable for occupational health". We do not believe Cahya's account – his statement of 5 November 2011 appears to have been procured by the appellants as a mere afterthought about a year and a half after Sayeh's 25 May 2010 statement, which was adverse to them, in an attempt to absolve themselves of liability. There was also no reason whatsoever for Cahya to think that the HDB officers who inspected the Flat were from the "Environment department" – in this regard, we note that the HDB officers averred that they had introduced themselves as officers from the HDB to Cayha when he let them into the Flat. Furthermore, Sayeh's statement of 25 May 2010 bore the HDB's logo on it. It is also significant that Sayeh himself has not come forward to recant the contents of his statement.

(c) Thirdly, we find the appellants' explanation that they were too trusting in leaving the bedroom which they say was meant for their family's use unlocked (see, *inter alia*, [12] above) inherently unbelievable. There were after all strangers living in the Flat. In our view, this is all too lame an excuse.

(d) Fourthly, we do not find Per to be a truthful person. Indeed, he appears to have lied to the HDB. In this regard, we highlight two points:

(i) Per said that his family was in financial difficulties and therefore had to make do with a single bed in the bedroom in the Flat which was kept for their use (see [24] above). This assertion of financial difficulties is inconsistent with the fact that Per and his family own at least two other private properties besides the Flat. As mentioned earlier, the appellants purchased the Blue Horizon property on 3 August 2007, approximately two months before purchasing the Flat. Indeed, at the time of purchasing the Flat, the appellants concealed their ownership of the Blue Horizon property from the HDB. Furthermore, Tee purchased the Centris property on 9 November 2007, slightly over a month after the appellants' purchase of the Flat (see [4] above).

(ii) KSA's letter dated 21 February 2014 stating that the appellants and their daughter had been residing in the Flat between April and July 2010 (see [27] above) contradicts the appellants' earlier account that they had moved out to stay with and take care of Per's widowed mother (see [12] above).

(e) Lastly, we agree with the Judge that the Sub-Tenancy Agreement might not reflect reality, and indeed does not reflect reality in the light of what we have said above. If sub-tenancy agreements were to be regarded as conclusive of the arrangements between flat owners and sub-tenants, flat owners would be able to circumvent the rule against unauthorised subletting by entering into agreements which do not reflect reality. We reiterate that in the present case, nothing was found in the Flat which could indicate that the appellants and their daughter were residing there.

81 In the light of the above, we hold that the HDB was amply justified in deciding to compulsorily acquire the Flat under s 56(1)(*h*) of the Act. There is no merit in the appellants' contention that there was insufficient evidence that they had sublet the whole Flat without the HDB's prior written consent.

82 Turning now to the appellants' second argument as set out at [79(b)] above, it can be

disposed of quite simply. We do not think the HDB erred in taking into account the appellants' failure to remain in continuous occupation of the Flat. This was a relevant consideration in the sense that it reaffirmed and complemented the evidence which indicated that the appellants had illegally sublet the whole Flat.

83 In the premises, we hold that there is no merit in the appellants' contention that the HDB and/or the Minister acted illegally and, therefore, also irrationally in deciding to compulsorily acquire the Flat.

Did the HDB breach the appellants' right to natural justice in refusing to disclose the undisclosed items which it relied on in deciding to compulsorily acquire the Flat?

84 We turn finally to the appellants' argument that there had been a breach of natural justice because the HDB did not disclose to them the undisclosed items which it relied on in deciding to compulsorily acquire the Flat (see [39] above). To recapitulate, these items are as follows:

(a) the anonymous tip-off which the HDB received on 23 December 2009;

(b) Sayeh's statement of 25 May 2010;

(c) the photographs taken by the HDB officers during the inspection of the Flat on 25 May 2010; and

(d) the Private Investigator's report.

85 We do not see any merit in this argument and will examine each of the undisclosed items in turn to explain why. First, the anonymous tip-off was a mere assertion by an informer that the appellants were not living in the Flat and had in fact sublet the whole Flat – this assertion was communicated to the appellants in the HDB's letter of intention dated 17 July 2010 (see [8] above), and it is clear from the appellants' letter to the HDB dated 28 October 2010 (see [12] above) and their letter to the Minister dated 27 December 2010 (see [14] above) that they were well aware of this assertion against them and had the opportunity to controvert it. In any event, the tip-off was hardly the basis for the action taken by the HDB. It simply caused the HDB to embark on an investigation. If the appellants had done no wrong, nothing untoward would have been uncovered by the investigation. It was the positive evidence which the HDB obtained from the on-site inspection of the Flat on 25 May 2010 which was determinative of its conclusion that the appellants had illegally sublet the whole Flat.

86 Secondly, as regards Sayeh's statement of 25 May 2010, it was a very short one containing just five sentences, *viz* (also reproduced at [7] above):

1. I have rented the above flat from the owners since Feb 2009 till date.

2. I am occupying the flat with 2 other flatmates.

3. The monthly rental is paid by my employer.

4. The monthly utilities bills are paid by my employer.

5. The owners did not reside in the flat.

The information in the first, second and fifth sentences was communicated to the appellants in the HDB's letter of intention dated 17 July 2010 (see [8] above), and it therefore cannot be said that the

appellants did not have the opportunity to refute that information. As for the information in the third and fourth sentences, its truth has never been disputed by the appellants.

87 Thirdly, with regard to the photographs taken by the HDB officers during their inspection of the Flat, these photographs were shown to Per at his meeting with three of the HDB's officers on 1 August 2013 (see [24] above). The appellants do not dispute the veracity of these photographs; neither do they deny that these photographs captured the condition of the Flat on the day of the inspection. More importantly, these photographs informed the appellants of the case which they had to meet. Their subsequent correspondence with the HDB shows clearly that they understood the case against them.

88 We turn finally to the point regarding whether the Private Investigator's report should have been disclosed to the appellants. Even though the report is not in the record of appeal and was not adduced in evidence in the court below, one can surmise that the report contains information on the Private Investigator's investigative methods and what he found at the Flat. We do recognise that generally, there is a duty to disclose an adverse report to an affected party so that he can respond to or controvert the contents of the report. As pointed out in *De Smith's Judicial Review* (Lord Woolf *et al* eds) (Sweet & Maxwell, 7th Ed, 2013) ("*De Smith*") at paras 7-057–7-058:

> **The level of disclosure required**
>
> **7-057** If prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers. The level of detail required must be such as to enable the making of "meaningful and focused representations". *In order to protect his interests, the person must also be enabled to controvert, correct or comment on other evidence or information that may be relevant to the decision and influential material on which the decision-maker intends to rely; including, in certain cases, disclosure of representations or information provided by third parties.* At least in some circumstances there will also be a duty on the decision-maker to disclose information favourable to the applicant, as well as information prejudicial to his case. …
>
> **Failure to make adequate disclosure**
>
> **7-058** *If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by this, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing*. … If the deciding body receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte (without notice to others involved) inspections during the course of or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked. …
>
> [emphasis added]

89 In a similar vein, Lord Denning, in *B Surinder Singh Kanda v Government of the Federation of Malaya* [1962] AC 322, which was approved by this court in *Mustafa Ahunbay v Public Prosecutor* [2015] 2 SLR 903 ("*Mustafa Ahunbay*") at [71], had this to say at 377:

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. …

90 The above principle, however, is not an unyielding or inflexible rule. The rule in favour of disclosing evidence is subject to exceptions, and may yield where public interest considerations dictate otherwise. At para 7-059, *De Smith* states:

> To the general rule [as stated in para 7-057] there are various exceptions … Briefly, *there are cases where disclosure of evidential material* might inflict serious harm on the person directly concerned … or other persons; where disclosure would be a breach of confidence or *might be injurious to the public interest* (e.g. because it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime, and *might make it impossible to obtain certain classes of essential information at all in the future*) … [emphasis added]

91 As further observed at para 8-020 of *De Smith*, modifications of the disclosure requirements have also been deemed to be acceptable for the protection of:

> … the internal workings of the decision-maker; the sources of information leading to the detection of crime or other wrongdoing; sensitive intelligence information; and other information supplied in confidence for the purposes of government, or the discharge of certain public functions. …

92 Similarly, this court in *Mustafa Ahunbay* recognised that the rule in favour of disclosing evidence "is not absolute, and must be weighed against any potential prejudice to the public interest which disclosure of information may cause" (at [69]).

93 In our view, there are, in the context of the present case, cogent public interests that militate against the disclosure of the Private Investigator's report. Requiring such disclosure may, as the respondents contend, result in the investigative methods used by the HDB's private investigators being made known to the public, and this may in turn allow people to "game" the system. While we note this contention, we hold, in any event, that in the context of this case, the non-disclosure of the Private Investigator's report to the appellants is wholly immaterial. As a responsible statutory body, the HDB did not act merely on the basis of the anonymous tip-off which it received on 23 December 2009. Instead, it caused a discreet investigation to be carried out. It was only when the Private Investigator's report confirmed what the tip-off alleged that the HDB decided to conduct an on-site inspection of the Flat. The HDB's decision to compulsorily acquire the Flat was made as a result of that inspection. Indeed, as we noted at [85] above, if the appellants had not illegally sublet the whole Flat, the inspection would not have uncovered anything to support the allegations against them. The Private Investigator's report did not in itself form the basis of the HDB's decision to compulsorily acquire the Flat; instead, the results of the inspection were the determinative factor. The appellants knew exactly the case which they had to meet, and the photographs taken by the HDB officers during the inspection were also disclosed to Per on 1 August 2013 (see [24] and [87] above). It is significant that, as mentioned earlier (see, *inter alia*, [12] above), the excuse offered by the appellants was that they had sublet only two of the bedrooms in the Flat as opposed to the entire Flat, and that they had been too trusting in leaving the bedroom reserved for their family's use unlocked, thus giving Sayeh the opportunity to move in without their permission. The appellants sent a number of letters to both the Minister and the HDB setting out detailed reasons as to why the Flat should not be compulsorily acquired, and the contents of their letters were "carefully considered" by both the Minister and the HDB in arriving at their respective decisions to compulsorily acquire the Flat. Thus, even though the Private Investigator's report was not disclosed to the appellants, they were not in any way hampered by this in making meaningful representations to controvert the accusations made against them. We reiterate that in our judgment, for the reasons set out at [80]–[81] above, it was not at all unreasonable for the HDB to have rejected the excuse offered by the appellants. Indeed, on the evidence, the case against the appellants was overwhelming.

94 In the light of the above, we hold that the HDB's failure to disclose the Private Investigator's report to the appellants did not breach their right to natural justice. Accordingly, we reject their arguments on this point.

Conclusion

95 For the foregoing reasons, while we agree with the appellants that they were not in breach of O 53 r 1(6) in filing OS 440/2014 only on 15 May 2014, we nevertheless dismiss their appeal as there is no merit in their substantive application for the quashing orders which they seek.

96 Given that the appellants have shown that the respondents' preliminary objection to OS 440/2014 based on O 53 r 1(6) is not valid, we will award the respondents only two-thirds of the costs and disbursements of this appeal. Such costs and disbursements are to be taxed if not agreed. There will also be the usual consequential order for the payment out of court of the security for costs.

97 In addition, we vary the Judge's order on the costs of the proceedings below in view of the appellants' partial success on the O 53 r 1(6) issue. The Judge ordered the appellants to pay the first respondent (the HDB) a total of $22,000 in costs and disbursements, and the second respondent (the AG), a total of $15,000 in costs (the Judge did not award disbursements to the AG). We are of the view that the costs awarded by the Judge to both respondents and the disbursements awarded to the HDB should similarly be reduced by a third.