Mohamed Amin bin Mohamed Taib and Others v Lim Choon Thye and Others [2009] SGHC 48

Case Number : OS 17/2008

Decision Date : 03 March 2009

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Hri Kumar SC, Gary Low and Benedict Teo (Drew & Napier LLC) for the plaintiffs; Ranvir Singh (UniLegal LLC) for the first to sixth defendants; Vijay Kumar (Arbiters' Inc Law Corporation) for the seventh and eighth defendants; Cheong Yuen Hee, Cheong Aik Chye (A C Cheong & Co) for the ninth and tenth defendants

Parties : Mohamed Amin bin Mohamed Taib; Foo Chuan Kwee; Chin Thean Seong — Lim Choon Thye; Lau Puay Huang @ Lau Phuay Huang; Executor/ Administrator of the Estate of Tan Kong Hock, Deceased; Lim Kim Yau; Lim Wee Thiam; Khin Maung Tin; Kailash Nath Rai; Vijay Kumar Rai; Seah Chin Kong; Ee Ah Choo

Land – Strata titles – Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) – Purpose of ss 84A(7) and 84A(8) Land Titles (Strata) Act – Whether "proceeds of sale" meant only purchase price

Land – Strata titles – Strata Titles Board – Minority subsidiary proprietors suffering loss from en bloc sale – Purchaser offering to compensate minority subsidiary proprietors for loss – Whether Strata Titles Board could consider compensation in calculating "proceeds of sale" under s 84A(7) Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

3 March 2009

Judith Prakash J:

Background

1 The plaintiffs brought this application as the authorised representatives of the consenting subsidiary proprietors who held at least 80% of the share values in the condominium development known as Regent Court (Strata Title Plan No. 866) comprised in Land Lot Mukim 17-5574T, Singapore ("Regent Court").

2 Regent Court is a residential development consisting of 49 apartments. As at June 2005, it was more than 20 years old. On 30 June 2005, at an extraordinary general meeting of the subsidiary proprietors of Regent Court, a resolution was passed approving the collective sale of the development at a reserve price of $31m. A Sale Committee was also elected at the meeting. At a subsequent general meeting held on 16 February 2006, the reserve price was increased to $34m. By 25 August 2006, a collective sale agreement had been signed by the subsidiary proprietors of 42 out of the 49 units in Regent Court and this represented 82.53% of the total share value in the development.

3 The collective sale first proceeded by way of a public tender. However, no bids were received within the period of the tender. Subsequently, on 24 January 2007, a company called Landquest Pte Ltd ("LPL") offered to purchase Regent Court at the price of $34m. This offer was accepted by the Sale Committee and a sale and purchase agreement was entered into on 3 April 2007 with a company named Regent Development Pte Ltd ("the Purchaser") as the nominee of LPL.

4 By a written resolution of the Sale Committee dated 10 July 2007, the plaintiffs were appointed

representatives for the purpose of applying to the Strata Titles Board ("the Board") under s 84A of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("the Act") for its approval of the collective sale. This application (the "STB Application") was filed on 20 July 2007.

5 The defendants, who are also subsidiary proprietors of units in Regent Court, have not consented to the collective sale. They filed various objections to the application. For the purposes of these proceedings before me, the only relevant objection was that filed by the ninth and tenth defendants. Although the ninth and tenth defendants put forward four grounds of objection, in these proceedings, I was only concerned with the first objection. This was that the collective sale would cause the ninth and tenth defendants to incur a financial loss as the proceeds of sale of their lot, after any deduction allowed by the Board, would be less than the price paid for the lot. They quantified their loss as being $93,935.75.

6 In the light of the estimated financial loss, the Sale Committee approached the Purchaser for an undertaking to make good the alleged financial loss. On 31 December 2007, the Purchaser furnished an undertaking to pay the ninth and tenth defendants the sum of $93,935.75 being the difference between the proceeds of sale under the collective sale of Regent Court and the price that the ninth and tenth defendants paid for their unit together with the stamp fees and legal costs claimed by them. By a written document ("the Undertaking"), the Purchaser further undertook to pay such additional sums as may be allowed by the Board as deductions under s 84A(8)(a) of the Act. Additionally, on 10 December 2007, the Sale Committee entered into a supplemental agreement with the Purchaser whereunder the Purchaser agreed to pay the ninth and tenth defendants, on completion of the collective sale, the sum of $93,935.75 and such additional deductions as the Board may allow.

7 The hearing of the STB Application commenced on 3 December 2007. On 11 December 2007, the Board heard arguments on the ninth and tenth defendants' objection on the ground of financial loss. Thereafter, the Board found that this objection had been made out and gave an oral decision dismissing the STB Application. Written grounds for the Board's decision were delivered on 24 December 2007.

8 On 7 January 2008, the plaintiffs filed this appeal and asked the Court for, *inter alia*, the following reliefs:

(a) A Declaration that the whole of the order of the Board made on 11 December 2007 dismissing the STB Application be set aside; and

(b) An Order that the STB Application be remitted back to the Board for a continuation of the Board's proceedings, with all evidence adduced thus far standing as part of the record.

The ground of the appeal was that the Board was wrong in law to have dismissed the STB Application based on its reasons as set out in its Grounds of Decision dated 24 December 2007 (the "Grounds").

9 I heard the appeal on 30 October 2008. I ordered that the whole of the order of the Board made on 11 December 2007 should be set aside and remitted the STB Application back to the Board for a continuation of the Board's proceedings. I also ordered that the Board was to decide who should bear the costs of the hearing before it on 11 December 2007 after it had completed its proceedings.

10 I now give the reasons for my decision.

The statutory provisions and the Board's decision

11 The relevant provisions of the Act that were in issue before me were ss 84A (7) and (8). These read:

> (7) Where one or more objections have been filed under subsection (4), the Board shall, subject to subsection (9), after mediation, if any, approve the application made under subsection (1) and order that the lots and common property in the strata title plan be sold unless, having regard to the objections, the Board is satisfied that —
>
> (a) any objector, being a subsidiary proprietor, will incur a financial loss; or
>
> (b) the proceeds of sale for any lot to be received by any objector, being a subsidiary proprietor, mortgagee or chargee, are insufficient to redeem any mortgage or charge in respect of the lot.
>
> (8) For the purposes of subsection (7) (*a*), a subsidiary proprietor —
>
> (a) shall be taken to have incurred a financial loss if the proceeds of sale for his lot, after such deduction as the Board may allow (including all or any of the deductions specified in the Fourth Schedule), are less than the price he paid for his lot;
>
> (b) shall not be taken to have incurred a financial loss by reason only that his net gain from the sale of his lot will be less than the other subsidiary proprietors; and
>
> (c) shall not be taken to have incurred a financial loss by reason that the proceeds of sale for his lot, after such deduction as the Board may allow (including all or any of the deductions specified in the Fourth Schedule), are less than the price he paid for his lot if he had purchased the lot after a collective sale committee had signed a sale and purchase agreement to sell all the lots and common property to a purchaser.

12 From para 18 of the Grounds, the Board appeared to have proceeded on the basis of a preliminary point in respect of the ninth and tenth defendants' financial loss objection because two conditions had, it considered, been met:

> (a) all parties had agreed that the Board should rule on that preliminary point; and
>
> (b) the plaintiffs and the ninth and tenth defendants had agreed to a set of facts and that the Board would decide that preliminary point based only on those agreed facts which did not include any reference to the additional payment offered by the purchaser.

13 The basis of the Board's decision to dismiss the STP Application are set out in paras 24 to 28 of the Grounds . These read:

> 24. By section 84A(8), the Board has to conclude that a subsidiary proprietor has "incurred a financial loss" if the proceeds of sale for his lot, after any deduction allowed by the Board, are less than the price he paid for his lot.
>
> 25. By applying the above formula to the agreed facts as set out below:
>
> (a) the gross proceeds of sale under the collective sale being S$932,191.00; and
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> (b) the purchase price for lot being S$993,000.00;

there would already be a financial loss of S$60,809.00. This mathematical fact is not disputed by the Applicants.

26. The Applicants' position is that the Board should look at the evidence showing the purchaser's undertaking to make good any financial loss of the [ninth and tenth defendants] after the Board has made the Order under the Act. It is the Applicants' position that this arrangement would be a valid answer to the [ninth and tenth defendants'] objection based on the *Gong Ing San* case and would empower the Board to dismiss the [ninth and tenth defendants'] objection based on financial loss.

27. The Board is not persuaded by the Applicants for the following reasons:

(a) the Board should not look at the said evidence relating to the purchaser's undertaking as the Board is limited to looking at the set of facts agreed between the Applicants and the [ninth and tenth defendants] since this procedure had been agreed by all the parties;

(b) even if the Board is not so limited, the Board should not look at the said evidence relating to the purchaser's undertaking as the Board is bound to look at what have been prescribed by section 84A(8), that is, the proceeds of the sale, any deduction allowed and the price paid by the [ninth and tenth defendants] for their lot and the amount that the purchaser has undertaken to pay does not fall into any one of the prescribed categories;

(c) even if the Board is to stretch the meaning of section 84A(8) as interpreted by the Applicants relying on the *Gong Ing San* case, the Board should not look at the said evidence relating to the purchaser's undertaking as, unlike the topping agreement in the *Gong Ing San* case which is enforceable by the respondent when the Board was making its decision in that case, the purchaser's undertaking in this case is not in the form of an agreement and that is therefore neither enforceable now nor after the Board has made its decision. However, to ensure that this observation is not misconstrued, the Board is not saying one way or the other the outcome of the Board's decision had the purchaser entered into an agreement with the [ninth and tenth defendants] instead as this question is not before the Board.

28. Accordingly, the Board finds that the [ninth and tenth defendants], as a matter of fact, has incurred financial loss as defined in section 84A(8) of the Act based on the facts as agreed by the Applicants and [ninth and tenth defendants].

Arguments and analysis

14 The seventh defendant and counsel for the ninth and tenth defendants made arguments in support of the Board's position. These were broadly the same and I will summarise them together.

15 They took two points. The first one was that there was no point of law that was raised by the appeal and therefore the court did not have jurisdiction to hear the appeal. The defendants relied on s 98(1) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) which provides that no appeal shall lie to the High Court against an order made by the Board except on a point of law. I did not see any merit in that argument because the main issue was the proper interpretation of s 84A of the Act and a question of statutory interpretation is always a question of law. See, for example, *MC Strata Title No 958 v Tay Soo Seng* [1993] 1 SLR 870 at p 875 where GP Selvam JC (as he then was) cited, with approval, the following passage from para 70 of the entry on Administrative Law in Vol 1(1) of *Halsbury's Laws of England* (4th Ed, Reissue):

> Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons, and misdirecting oneself as to the burden of proof.

16 The second point was the interpretation issue itself. The defendants asserted that by the Statement of Agreed Facts that had been placed before the Board, the plaintiffs had clearly admitted that the ninth and tenth defendants had incurred a financial loss of $93,935.75 within the meaning of s 84A(7)(a) read with s 84A(8) of the Act. They submitted further that the Board was not required or allowed to take any other factors into consideration. In support they cited the dictum of Belinda Ang J in *Yeo Loo Keng v Tan Yew Lee Kevin* [2007] 3 SLR 455 as follows:

> 23 The starting point … is that s 84A(7)(*a*) is one of the two prescribed reasons disallowing an application for a collective sale. Subsection (7)(*a*) of s 84A introduced the notion of a "financial loss" as a statutory ground for not approving the application made under s 84A(1) of the Act. Subsection (8)(*a*) is, in my view, a computational provision concerned with the computation of "financial loss" which is expressly tied to sub-s (7)(*a*) ...
>
> 24 Subsection (8)(*a*) contains a mechanism for the Board to determine a gain or loss situation for the objector from the collective sale. It is a simple exercise of a direct comparison between the collective sale price and the original individual price after taking into consideration allowable deductions to see whether there is a "financial loss". The existence of such a provision means that the same method of computation should be adopted in every case. The Board has no power to void, supplant or vary the formula …

17 Applying that dictum to the present case, the defendants submitted that the plaintiffs' argument that the Board may "supplant or vary" the statutory formula in computing financial loss by taking into consideration the undertaking given by the Purchaser was untenable. They noted that Parliament had specifically provided for an increase to be made from the proceeds of sale to an objector who suffered financial loss. By s 84A(7)(a), the Board was empowered to increase the objector's share of the sale proceeds with the consent of the collective sale committee. By s 84A(7)(b), Parliament had set a limit to such an increase viz 0.25% of the proceeds of sale for each lot or $2,000 for each lot whichever is the higher. Parliament was at pains to make sure that each owner received a proportionate share of the proceeds of sale and it was not willing to allow any one or more owners to hold the owners to ransom. The plaintiffs were attempting to circumvent this provision by obtaining the undertaking and supplemental agreement. In effect they were trying to compel the ninth and tenth defendants to accept the Undertaking to which these defendants were not parties to and give up their statutory right not to be compelled to sell. This should not be allowed and the appeal should be dismissed.

18 To restate, the question that was being debated was the true meaning of the "proceeds of sale for his lot". Did this phrase refer specifically and only to the amount that an individual proprietor could expect to receive for his lot on the basis of the sale price mentioned in the sale and purchase agreement or could a wider meaning be derived from it? Upon consideration, I agreed with the plaintiffs' submission that the interpretation of s 84A(8)(a) given to that section by the defendants and by the Board was wrong although the literal meaning of the wording of the section certainly supported the view taken by the Board. I will explain.

19 The applicable legal principles in respect of statutory interpretation have often been considered by our courts over the past two decades. In *Low Gim Siah v Law Society of Singapore* [1992] 1 SLR 166, the High Court rejected the literal approach to statutory interpretation:

> In recent years, the literal rule has been regarded as completely out-dated.
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> (Per Goh Phai Cheng JC at p 172)

Instead the courts have consistently applied the purposive approach to statutory interpretation – see *Low Gim Siah*, *Constitutional Reference No 1 of 1995* [1995] 2 SLR 201, *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1 and *PP v Tsao Kok Wah* [2001] 1 SLR 666. This approach is dictated by s 9A(1) of the Interpretation Act (Cap 1) ("Interpretation Act") which mandates that when a written law is being interpreted, "an interpretation that would promote the purpose or object underlying the written law" is to be preferred to an interpretation that would not promote that purpose. The Constitution of the Republic of Singapore Tribunal which heard *Constitutional Reference No 1* further made it plain that the purposive approach is to be applied even if the statutory provision in question is unambiguous and consistent with the rest of the statute.

20 Thus, in construing s 84A(8)(a), I had first to determine what the purposes of the Act and the particular section referred to were. Section 9A(2) of the Interpretation Act expressly allows the court to refer to extrinsic materials to ascertain the meaning of statutory provisions and this includes speeches made in Parliament in relation to the legislation in question.

21 At the Second Reading of the Bill containing the provisions for collective sales at Singapore Parliamentary Debates, Official Report (31 July 1998), vol 69 at cols 601-607, the Minister of State for Law said:

> I had informed this House on 19th November last year that Government would be amending the law to make it easier for en-bloc sales to take place. The current position is that a single owner, for whatever reason, can oppose and thwart the sale. Government has received many appeals and feedback from frustrated owners whose desires to sell their flats or condominiums en-bloc have been so thwarted. As a result, these buildings cannot take advantage of enhanced plot ratios to realise their full development potential, which would have created many more housing units in prime 999-year leasehold or freehold areas for Singaporeans. A secondary benefit is that these developments, especially the older ones, could have been rejuvenated through the en-bloc process.

It was clear from this speech and others made in Parliament that the main purpose of the provisions relating to collective sale in the Act was to make it easier for collective sales to go through in order to promote better utilisation of scarce land resources in Singapore and also urban redevelopment.

22 The approach the courts should take to the Parliamentary intention behind the Act has been considered many times. In one of these decisions, *Ng Swee Lang v Sassoon Samuel Bernard* [2007] SGHC 190, Andrew Ang J neatly encapsulated the prevailing view (after a thorough review of the authorities) in the following passages:

> 43 To conclude, the modern approach in Singapore as well as in England, Australia and Canada is to treat the question as one of statutory construction to be answered by looking at the whole scheme and purpose of the Act and by weighing the importance of the particular requirement in the context of that purpose and asking whether the legislature would have intended the consequences of a strict construction, having regard to the prejudice to private rights and the

claims of the public interest (if any).

…

55 At the end of the day, each objection must be examined on its own facts and the particular requirement breached set against the overall purpose of the legislation.One should then consider whether a strict construction and the invalidation of the Board's order is what Parliament would have intended, taking into account any prejudice to the rights of parties and the public interest (if any).

23 Even when considering the safeguards put in place to protect individual owners in ss 84A(7) to (9) of the Act, it appears that the approach taken by Parliament was that the Board was required to approve the collective sale unless specific grounds had been established by the objectors. Section 84A(7) states in imperative terms that "the Board shall, subject to subsection (9) … approve the application … and order that the lots and common property … be sold unless … the Board is satisfied that" any minority owner will suffer, *inter alia*, a financial loss.

24 It is worthwhile noting that in explaining the safeguards in the Act, the Minister of State for Law said in Parliament at the Second Reading that:

The Board will look at the sale price, method of distributing the sale proceeds to ensure that the minority owners are treated no less favourably than the majority, and the relationship of the purchaser to the owners, to ensure that there is no collusion. If the Board decides that the transaction is bona fide and an arm's length transaction, the sale will proceed …

If mediation fails, the sale will nevertheless proceed as long as the transaction is bona fide and at arm's length, unless there are exceptional circumstances to warrant the Board assuming a more pro-active role; for example, the sale proceeds are lower than the purchase price he had paid for the unit or are insufficient to redeem the outstanding mortgage or charge on the unit. This is based on the underlying assumption that none of the owners in an en-bloc sale should lose out financially.

25 Whilst it is plain from the above speech that Parliament was concerned that an owner in an en-bloc sale should not lose out financially by reason of that sale, that does not mean that only a literal approach to s 84A(7) would achieve that purpose. The Board's view was that in order to determine whether any objector would incur a "financial loss" within the meaning of that term in s 84A(7), the "proceeds of sale" referred to in s 84A(8) meant strictly the proportion of the sale price in the collective sale agreement which was payable to that objector and would not include any additional amount (not mentioned in the sale and purchase agreement) which the purchaser had agreed to pay the objector.

26 The plaintiffs, however, argued that the approach taken by the Board in construing s 84A(8) undermined the legislative purpose behind the Act and was also highly prejudicial to the public interest in that it would unreasonably hinder en-bloc sales. This was because since property prices are not flat but rise and fall over time, it is conceivable that in any development there will be at least one subsidiary proprietor who had purchased his unit when the price was much higher than at the time of the en-bloc sale and would therefore suffer a "financial loss" if the development was subject to such a sale. In these circumstances, even if 99% of the subsidiary proprietors supported the sale and only the person who was liable to lose money objected, the sale could not go through unless:

(a) the subsidiary proprietor concerned accepted his loss and did not object to the en-bloc

sale (this is not likely to happen); or

(b) the subsidiary proprietor entered into a side agreement with the purchaser and/or the other owners to receive compensation in exchange for him not objecting (this would mean that that owner could hold the en-bloc sale hostage until his conditions are met); or

(c) the purchaser offered a price for the development which would ensure that no one would suffer a loss (this is unlikely as the purchaser would not be able to anticipate what financial loss each owner would claim and secondly it would force the purchaser to offer a really high premium for the en-bloc sale, a requirement that would work to discourage en-bloc sales).

The plaintiffs therefore submitted that on the Board's interpretation of ss 84A(7) and 84A(8) any subsidiary proprietor with a paper loss of any amount would be entitled to refuse any offer made to compensate him, and thereby prevent the collective sale from going through. In the plaintiffs' submission, the proper and purposive interpretation of "proceeds of sale for his lot" under s 84A(8) would be that this phrase referred to the moneys which the ninth and tenth defendants would receive for their lot upon the completion of the collective sale. Such an interpretation would allow the Board to take into account all offers of compensation and therefore reach a more equitable result which would also promote the objective of the Act.

27 I accepted the above submission. I considered that the legislature would not have intended the adverse consequences to future en-bloc sales that would arise from a strict construction of "proceeds of sale". I also agreed that the interpretation propounded by the plaintiff was not a strained interpretation of the Act. There was no reason why "proceeds of sale" should be limited to simply looking at the "purchase price" set out in the sale and purchase agreement. Adopting the wider interpretation would further the legislative purpose of the Act by taking into account efforts to make good the financial loss of individual subsidiary proprietors and to ensure that no individual subsidiary proprietor would be prejudiced by the collective sale. If the objecting subsidiary proprietor would still suffer a financial loss despite the compensation sum offered, then the Board would have to dismiss the application and none of the other subsidiary proprietors could complain about this. On the other hand, if the objecting subsidiary proprietor's financial loss would be fully met by the compensation sum, then there would be no basis to continue to object to the en-bloc sale. As the Act is structured, it does not require that all the subsidiary proprietors should make a profit from the en-bloc sale. It only mandates that no one should make a financial loss. This is plain from s 84A(8)(b) which provides that it is not a financial loss if any subsidiary proprietor makes less profit from the sale of his lot than the others do.

28 Adopting such an interpretation means that the Board would be entitled to consider not only the sale and purchase agreement but also the Undertaking and the supplemental agreement in deciding whether or not the ninth and tenth defendants had suffered "financial loss" under the Act. In my view, the Board was, accordingly, wrong in law to decide that it could not look at these additional documents simply because they were extrinsic to the sale and purchase agreement.

29 There was an argument that the Board could not consider the undertaking because this document was not enforceable by the ninth and tenth defendants. That argument was misplaced. Under s 84A(11) of the Act, the Board has the power to make any order and to give any direction "as may be necessary or expedient" to give effect to an order made under s 84A(7) for the collective sale of the development. This section empowers the Board to facilitate the en-bloc sale in any way necessary and therefore the Board would have had the power, had it wished to exercise it, to allow the sale to go through subject to the purchaser (which had already indicated its willingness to compensate the ninth and tenth defendants) entering into a binding agreement with the ninth and

tenth defendants to make good the financial loss sustained by them. It could also order the purchaser to pay the compensation moneys to someone to hold as stakeholders pending the completion of the sale and purchase so that there would be no worry about default on the part of the purchaser.

30 The other reason why the Board decided not to look at the undertaking and the supplemental agreement in considering whether the defendants concerned had suffered financial loss was that it took the view (para 27(a) of the Grounds) that it was limited to looking at a set of facts agreed between the plaintiffs and the defendants since this procedure had been agreed to by all the parties. The plaintiffs took me through the transcript of the proceedings before the Board and I was satisfied that the plaintiffs had not in fact agreed that the question of whether ultimately there was financial loss or whether the undertaking sufficiently dealt with that loss was encompassed in the Statement of Agreed Facts. Further, the document itself did not support any such understanding. The document was in three sections. The first section was entitled "Main Facts Agreed" and contained three items: the purchase price of the ninth and tenth defendants' lot, their stamp fees and legal costs and the amount that they would receive under the sale and purchase agreement. The second section set out the item (a sum of $182,224.81 representing interest on their mortgage loan) which the ninth and tenth defendants wanted to claim as part of their financial loss and in the third section, the ninth and tenth defendants agreed to withdraw other items of claim that they had originally made. It was clear to me that the Statement of Agreed Facts simply contained some basic facts that were needed for computational purposes but it did not in any way indicate that the plaintiffs had taken a certain view of the manner in which s 84A(7) and (8) of the Act should be interpreted.

31 For the reasons given above, I concluded that the Board had made an error of law when it dismissed the Statutory Application before hearing all the evidence. I therefore made the orders that I did. I should reiterate here that this judgment deals only with the evidence that the Board is entitled to consider in determining the objections of the ninth and tenth defendants. It should not be read as mandating the conclusion the Board should come to once it has received all relevant evidence and heard the parties' submissions.