

Eng Foong Ho and Others v Attorney-General
[2008] SGHC 69

Case Number : OS 79/2008
Decision Date : 09 May 2008
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Ang Cheng Hock and Vikram Nair (Allen & Gledhill LLP) for the plaintiffs; Eric Chin and Janice Wong (Attorney-General's Chambers) for the defendant
Parties : Eng Foong Ho; Hue Guan Koon; Ang Beng Woon — Attorney-General

Constitutional Law – Equal protection of the law – Whether acquisition of temple and not nearby mission or church violating equal protection accorded under Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) – Article 12 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint)

Constitutional Law – Fundamental liberties – Freedom of religion – Whether acquisition of temple for public purposes limiting person's right under Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) to profess, practise and propagate his religion

Land – Compulsory acquisitions – Section 5 Land Acquisition Act (Cap 152, 1985 Rev Ed)

9 May 2008

Tan Lee Meng J:

1 The plaintiffs, Ms Eng Foong Ho, Mr Hue Guan Koon and Ms Ang Beng Woon, are devotees of the Jin Long Si Temple, which is located at No 61 Lorong A-Leng, Singapore 536751 ("the temple property"). They sought a declaration that the acquisition of the temple property by the Collector of Land Revenue ("the Collector") violated Article 12 of the Constitution of the Republic of Singapore ("the Constitution"), which provides that all persons are equal before the law and entitled to the equal protection of the law. I dismissed their application and now give the reasons for my decision.

Background

2 The temple property is subject to a trust for religious purposes created in 1941. The trustees, Mr Soon Joo Ee, Mr Tan Tion Beng and Mr Tan Poh Heong, who are the legal owners of the temple property, are not parties to this action.

3 The temple property is located near the new Bartley MRT station, which is along the Circle Line. Adjacent to the temple property is the Ramakrishna Mission ("the mission"), and next to the mission stands the Bartley Christian Church ("the church").

4 In a letter dated 20 January 2003, the Collector informed the trustees of the temple property as follows:

Today, Government announced the implementation of Stage 3 of the Circle Line (CCL) that will extend the CCL from Upper Paya Lebar Road/Bartley Road to Marymount Road. Details of the land acquired were gazetted today.

2 Your property is affected by the acquisition. Notice in accordance with the Land

Acquisition Act is attached.

5 The Gazette notification in relation to the acquisition of the temple property and another nearby property, a residential development (Strata Title Plan No 1278), was published on 20 January 2003. The Gazette notification stated that the two properties were acquired for the "construction of Circle Line stage 3 & comprehensive redevelopment."

6 The temple's trustees, who noted that the land occupied by the mission and the church had not been acquired by the Collector, appealed against the acquisition of their property. In a letter dated 23 January 2003 to Mr R Ravindran, the Member of Parliament for Braddell Heights GC, Mr Tan Poh Heong, one of the trustees, stated as follows:

[W]e cannot understand the following:

(A) Why our temple land is the only piece of land being singled out for acquisition among the under-mentioned religious organisation[s] around our neighbourhood vicinity

- 1 Upper Paya Lebar Chinese Methodist Church
- 2 Bethany Independent Presbyterian Church
- 3 Bartley Christian Church
- 4 Ramakrishna Mission Temple.

(B) Why a Chinese Temple with a history of more than 60 years is picked to be acquired from a group of religious bodies that are much 'younger' in age.

(C) Along Lorong How Sun, there are rows of Bungalows, semi-detached & terrace houses are left untouched; whereas only our temple land is subject to acquisition; hence it becomes very questionable.

7 Numerous appeals against the acquisition of the temple property were made to the Prime Minister, Ministers and Members of Parliament. On 26 April 2004, Mr R Ravindran appealed to the Prime Minister to look into the matter. On 21 July 2004, the Singapore Land Authority ("SLA") replied as follows:

1 We refer to the appeal by Mr R Ravindran ... on your behalf to the Prime Minister, dated 26 April 2004.

2 [T]he Government does not distinguish between the religious groups or types of development in deciding which parcels of land to acquire. The acquisition of the temple was made after careful study and consideration.

3 Unlike the other cases cited by you in your appeal, Jin Long Si Temple is zoned Residential use in the Master Plan. The acquisition of the site will allow better optimization of land use as it can be amalgamated with the adjoining State land for comprehensive redevelopment. This is part of our continuous effort to optimise land use in land-scarce Singapore. We therefore regret that we are unable to accede to your request not to acquire the land.

8 Although the temple property was gazetted for acquisition on 20 January 2003, the temple trustees were given up to 31 January 2008 to hand over the said property to the Collector. As the

date for the handover of the property to the authorities neared, the temple trustees appealed again to the Prime Minister on 23 May 2007 to intervene in the matter. On 20 June 2007, the Permanent Secretary for Law and the Permanent Secretary for National Development jointly replied to the temple trustees as follows:

We have studied your appeal and noted that the grounds for retention of Jing Long Si Temple put forth in this appeal have already been addressed previously. We regret to inform that we are not able to accede to the request to retain the temple by rescinding the acquisition.

To reiterate, the Government does not distinguish among the religious groups or types of development in deciding which parcels of land to acquire. The acquisition of the temple, made after careful study and evaluation, was to allow better optimization of land use by amalgamating with the adjoining State land for comprehensive redevelopment.

9 On 16 January 2008, the plaintiffs filed the present originating summons for a declaration that the acquisition of the temple property violated Article 12 of the Constitution.

Whether the plaintiffs have *locus standi*

10 The first hurdle standing in the way of the plaintiffs relates to *locus standi*. What standing do the plaintiffs, who are merely temple devotees, have in the acquisition of the temple property when its legal owners, the trustees, are not parties to the action and have not come to court for any relief against the acquisition order?

11 The plaintiffs, who claim to have a strong emotional attachment to the temple, assert that they have a "legitimate interest" in the matter. However, in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* [2006] 1 SLR 112, the Court of Appeal stated at [15] as follows:

As far as an action for a declaration is concerned, the requirement that the plaintiff must have the *locus standi* required to bring the action is the equivalent of requiring a plaintiff in an action for substantive relief to have a cause of action. *This is because in order to have the necessary standing, the plaintiff must be asserting the recognition of a "right" that is personal to him.*

[emphasis added]

12 The Court of Appeal approved of the following passage from Lord Diplock's judgment in *Gouriet v Union of Post Office Workers* [1978] AC 435, at 501:

The only kinds of rights with which courts of justice are concerned are legal rights; and a court of civil jurisdiction is concerned with legal rights only when the aid of the court is invoked by one party claiming a right against another party, to protect or enforce the right or to provide a remedy against that other party for infringement of it, or is invoked by either party to settle a dispute between them as to the existence or nature of the right claimed. So for the court to have jurisdiction to declare any legal right, it must be one which is claimed by one of the parties as enforceable against an adverse party to the litigation, either as a subsisting right or as one which may come into existence in the future conditionally on the happening of an event.

13 The plaintiffs contended that they had a right to commence the present action on the ground that where an individual's constitutional rights are affected, he or she has a sufficient interest to ensure that his or her rights are protected. They relied on *Chan Hiang Leng Colin & Ors v Minister for Information and the Arts* [1996] 1 SLR 609, where the Court of Appeal reiterated that the sufficiency

of the applicant's interest is judged in relation to the subject matter of the application and added as follows at 614:

In the present case, what is complained of is an alleged violation of a citizen's constitutional right under art 15 of the Constitution to profess, practise and propagate his religion. Such rights are constitutionally enshrined. If a constitutional guarantee is to mean anything, it must mean that any citizen can complain to the courts if there is a violation of it. The fact that the violation would also affect every other citizen should not detract from a citizen's interest in seeing that his constitutional rights are not violated.

14 While the courts must vigorously uphold a citizen's right to religious freedom, the short answer to the plaintiffs' line of argument is that by acquiring a temple, church or mosque for public purposes, the government is not limiting any person's right under the Constitution to profess, practise and propagate his religion.

15 In truth, this is a land acquisition matter that has nothing to do with religious freedom and it is for the legal owners of the temple property, namely the trustees, who are directly affected by the acquisition order, to institute legal proceedings against the authorities if they are of the view that their rights have been infringed. It is pertinent to note at this juncture that there was a dispute as to who are the beneficiaries of the trust of the temple land. The plaintiffs pointed out that Transfer 1/66674P shows that the trustees hold the temple property on trust for "San Jiao Sheng Tang Buddhist Association" (the "Association"), and that they are members of this Association. However, State Counsel Eric Chin, who appeared on behalf of the Attorney-General, asserted that the said Transfer only tells part of the story and as the temple property is, in accordance with the indenture creating the trust on 17 October 1941, a charitable trust for religious purposes, there are no beneficial owners. In his view, there might well be a case for the rectification of the Land Register to reflect the real position.

16 The question of beneficial ownership of the temple property is not an issue before this court. What is relevant for present purposes is that the plaintiffs' own rights have not been infringed and they have suffered no special damage. The trustees of the temple property had already agreed to hand over the acquired land to the Collector and to accept the compensation for the acquisition of their property. Furthermore, the trustees had accepted an alternative site for the temple at Tai Seng Avenue as well as a temporary site for worshippers until the completion of the new temple at Tai Seng Avenue. State Counsel Eric Chin rightly submitted that as everything has been put into place for a peaceful handover of the temple property, it made no sense for the court to grant the declaration sought when the key parties, namely the trustees, are not parties to the present proceedings.

17 I thus find that the plaintiffs have no *locus standi* to institute the present proceedings.

Whether there was a breach of Article 12 of the Constitution

18 Although I have ruled that the plaintiffs have no *locus standi* to institute the present proceedings, I will, for the sake of completeness, consider whether there has been a breach of Article 12 of the Constitution, which provides as follows:

All persons are equal before the law and entitled to the equal protection of the law.

1 9 In *Ong Ah Chuan v Public Prosecutor* [1981] AC 648, Lord Diplock explained the effect of Article 12 in the following terms at 673:

Equality before the law and equal protection of the law require that *like should be compared with like*. What article 12(1) of the Constitution assures to the individual is the right to equal treatment with other individuals in *similar circumstances*.

[emphasis added]

20 The plaintiffs, who made it amply clear that they are not alleging bad faith on the part of the authorities, asserted that the temple, the mission and the church are all members of the same class in that they are places of worship located near the Bartley MRT station and in a predominantly residential area. They contended that if the temple property was accorded different treatment as compared to the mission and the church, the differentiation must be founded on rational reasons. In their view, there were no rational reasons for the differentiation.

21 The acquisition of the temple property was carried out pursuant to the Land Acquisition Act (Cap 152, 1985 Rev Ed) (the "Act"). The reason given in the *Gazette* notification for the acquisition of both the temple property and a nearby residential development was that the two properties were required for the "construction of Circle Line stage 3 & comprehensive redevelopment". However, it is worth noting that SLA's Mr Nelson Liew Jeng Torng pointed out in his affidavit dated 25 January 2008 at [2] that it was obvious from the attached plans that the temple land was acquired for comprehensive redevelopment while the other property mentioned in the same *Gazette* notification was acquired for the construction of stage 3 of the Circle Line. It ought to be noted that s 5(3) of the Act provides as follows:

The notification shall be conclusive evidence that the land is needed for the purpose specified therein as provided in subsection (1).

22 In his affidavit dated 25 January 2008, Mr Eng Gim Hwee ("Mr Eng"), a planner in the Urban Redevelopment Authority ("URA"), explained at [7] to [9] why the other near-by properties owned by the other religious bodies were not acquired in the following terms:

7 As for the Church site, the site context did not even give any reasonable opportunity for amalgamation. There was no adjoining State land with the Church or with the lands immediately surrounding the Church. As such, there was simply no reason to disturb the existing low density housing area by acquiring the Church site either by itself or as part of a larger comprehensive redevelopment plan with the lands surrounding it.

8 As for the Mission site, the 3 main buildings within the site, that is the Temple, Boys' Home and Cultural Centre was already under study for conservation before 2002. As such, it was not appropriate to undertake acquisition of the Mission site on its own or as part of a larger comprehensive redevelopment plan with the lands surrounding it. The 3 main buildings were eventually gazetted for conservation in 2006.

9 No special considerations relating to the different religious groups were taken into account in the preparation and confirmation of comprehensive redevelopment plans. The Government acts impartially when land use planning objectively shows that a religious site is required for purposes of comprehensive redevelopment.

23 On 19 December 2007, the temple property's representatives met the Deputy Prime Minister, Professor S Jayakumar, and the Minister for National Development Mr Mah Bow Tan. Mr Mah cited a number of other acquisition cases with similar circumstances. A few days later, on 24 December 2007, the SLA forwarded to the temple property's representatives a write-up on these cases. To begin with,

the SLA pointed out that St Matthews Church, near Outram Park MRT station, was acquired for comprehensive redevelopment of the street block into high-density residential use while the Layan Sithi Vinayagar Hindu Temple at Keong Saik Road was not acquired as it was already a building under conservation. In response to the plaintiffs' complaint that other religious sites nearer to the Bartley MRT station had not been acquired, the SLA pointed out that while the Central Sikh Gurdwara Temple, which is near the Boon Keng MRT station was not acquired as it could not be amalgamated with adjacent State land for comprehensive redevelopment, a number of shop houses and storey terrace houses that were further away from the Boon Keng MRT station, were acquired as they could be merged with the adjoining State land for higher density residential development.

24 Evidently, the plaintiffs had made an unsubstantiated allegation that Article 12 of the Constitution has been breached merely because the temple property, and not the mission or the church, had been acquired. They attempted to shore up their futile case by introducing an affidavit by a chartered land surveyor, Mr Goh Tiam Lock ("Mr Goh"), who stated that even if the temple property had not been acquired, the same number of residential units can be built on the State land if the authorities increased the plot ratio for the existing State land to 2.928. He also pointed out that if the Bodhi tree on the temple property is to be preserved, residential units cannot be constructed on the temple property.

25 Mr Goh had merely suggested an alternative way of redeveloping the area in question. It is noteworthy that he did not allege that the authorities' plan for redevelopment of the area was wrong or indefensible. Apart from the fact that the courts are in no position to decide on which is a better plan for the redevelopment of any area in Singapore, the Notification of Acquisition in the Gazette is, in view of s 5(3) of the Act, conclusive evidence that the temple property is required for the purpose specified therein. In *Galstaun and Anor v AG* [1980-81] SLR 345, FA Chua J pointed out at 346-347 that the "Government is the proper authority for deciding what a public purpose is" and when "the Government declares that a certain purpose is a public purpose it must be presumed that the Government is in possession of facts which induce the Government to declare that the purpose is a public purpose". More recently, in *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2006] 3 SLR 507, Andrew Phang J stated that s 5 of the Act is consistent with the underlying rationale and purpose of the Act itself and, in particular, with the idea that the relevant government authority is in the best position to determine whether or not the land concerned is required for one or more of the purposes set out in s 5(1) of the Act.

26 Reference must next be made to the plaintiffs' complaint that inconsistent reasons had been given to justify the acquisition of the temple property. The plaintiffs first referred to a letter dated 3 April 2003 from the Ministry of Law, which explained that unlike the temple property, the nearby religious institutions are on land zoned either as a place of worship or as a civic and community institution in the URA's Master Plan of 1998. The plaintiffs also noted that the URA's planner, Mr Eng, had explained in his affidavit that the temple land was acquired because it was zoned for residential purposes and an amalgamation with State land was necessary to attain the gross plot ratio of 2.8 for high density residential development. They pointed out that like the mission, the temple property could also be viewed as housing a civic and community institution because the temple is involved in civic and cultural activities. For instance, it provides free vegetarian meals to visitors and rooms for poor families. The plaintiffs also complained that it should, like the church, have been designated as a place of worship. However, complaints about the zoning of land in the URA's Master Plan of 1998 should have been made when the Master Plan was unveiled and should not be dragged into the present proceedings.

27 In any case, there was ample evidence that properties had been acquired by the Collector for public purposes regardless of how they were zoned and that sites belonging to religious institutions

and zoned as places of worship have, where necessary, been acquired by the Collector. The SLA pointed out that St Matthew's Church at Neil Road and the Chee Hwan Kong Temple at Flower Road had been acquired for comprehensive redevelopment in conjunction with the construction of the North East MRT line even though they were zoned as places of worship.

28 Finally, the plaintiffs' delay in commencing this action should be noted as a delay in instituting proceedings for a discretionary remedy is a factor which may be taken into account when deciding whether or not to grant the declaration sought. In *Haji Hussin bin Haji Ali & Ors v Datuk Haji Mohamed bin Yaacob* [1983] 2 MLJ 227, Wan Suleiman FJ, who delivered the judgment of the Malaysian Federal Court, said as follows at 232:

Now the granting of a declaratory judgment is a matter purely at the discretion of the court. We do not think that the circumstances surrounding the present appeals would justify our exercising this discretion in favour of the appellants where there has been, in our view, unreasonable vacillation and delay.

29 The notice to acquire the temple property was gazetted more than five years ago on 20 January 2003. The plaintiffs claimed that they are not guilty of delay because it was only in November 2007 that they found out that a reversal of the decision to acquire the temple land was no longer on the cards. However, the fact that the decision to acquire the temple property would not be reversed was made plain long ago and the plaintiffs had no real excuse for the inordinate delay in commencing their action.

30 Even if the question of delay in commencing the present proceedings is not taken into account, the plaintiffs' application cannot succeed. Hence, it is dismissed with costs.

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