Aspinden Holdings Ltd v Chief Assessor and Comptroller of Property Tax [2006] SGCA 31

Case Number : CA 12/2006

Decision Date : 11 September 2006

Tribunal/Court : Court of Appeal

Coram : Lai Siu Chiu J; Andrew Phang Boon Leong JA; Tay Yong Kwang J

Counsel Name(s) : Chee Fang Theng and Leon Kwong Wing (KhattarWong) for the appellant; Julia Mohamed (Inland Revenue Authority for Singapore) for the respondents

Parties : Aspinden Holdings Ltd — Chief Assessor and Comptroller of Property Tax

Administrative Law – Judicial review – Chief Assessor amalgamating property tax accounts and reducing property tax rebates – Whether discretionary power of Chief Assessor to amalgamate accounts exercised unreasonably or improperly – Whether presumption of regularity rebutted – Section 116 illus (e) Evidence Act (Cap 97, 1997 Rev Ed)

Revenue Law – Property tax – Annual value – Property comprising subsidiary strata lots – Several strata lots occupied by each tenant – Whether each lot constituting separate property for purposes of assessing annual value – Whether Chief Assessor having power to reconfigure and amalgamate several strata lots into one property tax account – Whether Chief Assessor having power to regard several lots together and assess annual value as whole – Section 2(7) Property Tax Act (Cap 254, 2005 Rev Ed)

Revenue Law – Property tax – Valuation list – Chief Assessor amalgamating property tax accounts without authorisation from owner thereby reducing property tax rebates – Chief Assessor seeking to amend Valuation List to reflect amalgamation of property tax accounts – Whether Chief Assessor entitled and having valid grounds to amend Valuation List – Sections 20(1), 20(2) Property Tax Act (Cap 254, 2005 Rev Ed)

Words and Phrases – "Lot" – Whether strata lot must be separately assessed – Section 2(7) Property Tax Act

11 September 2006

Lai Siu Chiu J (delivering the grounds of decision of the court):

1 This was an appeal by Aspinden Holdings Limited ("the Appellant") against the decision of Andrew Ang J ("the judge") holding, *inter alia*, that the Chief Assessor and Comptroller of Property Tax ("the Respondents") were entitled to amalgamate the Appellant's property tax accounts and thereby reduce the amount of property tax rebates which the Appellant was otherwise entitled to (see [2006] SGHC 72). We dismissed the appeal and now set out our reasons.

The facts

2 The Appellant is a Singapore-incorporated company which purchased various strata title lots in Wisma Atria located at 435 Orchard Road, Singapore ("the Building"). The Building had been strata-divided in 1989 and was governed by the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA"). The strata lots were leased out to various tenants who operated retail or restaurant outlets.

3 The appeal involved the manner in which property tax was assessed for 155 lots ("the subject properties"). While the subject properties were each issued with separate subsidiary strata certificates of title ("SSCT"), in reality, the tenants of these properties only operated a total of 45 business units due to the fact that some retail or restaurant outlets physically occupied two or more strata-titled lots.

4 The present appeal arose from the Respondents' decision on 21 November 2002 to amalgamate the property tax accounts of the subject properties. This effectively reduced the amount of property tax rebates which the Appellant could otherwise have enjoyed under various property tax remission orders.

5 The Appellant contended that the Respondents had erred in re-configuring and amalgamating the property tax accounts. It argued that the Respondents ought to have assessed each individual lot separately, in order to ensure consistency with the language and purport of the Property Tax Act (Cap 254, 1997 Rev Ed) ("the 1997 Act"). The Appellant further alleged that the Respondents' act of amalgamation could not withstand scrutiny under the principles of administrative law as the Respondents had exercised their powers unreasonably and improperly.

6 The Valuation Review Board ("VRB") disagreed with the Appellant and held that the Appellant had not proved its case. In its decision, the VRB opined that s 2(7) of the present Property Tax Act (Cap 254, 2005 Rev Ed) ("PTA") (previously s 2(6) of the 1997 Act) was deficient in so far as it merely referred to the term "lot" and excluded the word "flat". A literal interpretation of s 2(7) thus implied that the Respondents had no power to assess properties on an amalgamated basis. The VRB felt that this was contrary to parliamentary intent, and therefore opted for a purposive approach to s 2(7). To this end, the VRB held that the words "flat" and "lot" were interchangeable. This purposive reading enabled s 2(7) to cater for the assessment of properties which occupied multiple contiguous lots, since a flat could consist of more than one lot. Where the *rebus sic stantibus* principle (*ie*, that the properties should be assessed as they stand and as they are used) was concerned, the VRB took the view that the principle could operate harmoniously with its purposive reading of s 2(7). The VRB opined that the *rebus sic stantibus* principle remained applicable in identifying the assessable entity, as well as the "owner" who would be liable to pay property tax. Finally, the VRB summarily rejected the Appellant's claims that the Valuation List had been wrongly amended and that the decision to amalgamate the accounts was an unreasonable and improper one.

7 The decision of the VRB was upheld on appeal by the judge albeit on slightly different grounds. The judge agreed with the VRB's reasoning on most points. However, he parted company with the VRB on the manner in which s 2(7) ought to be interpreted. The judge opined that s 2(7) did not impose a blanket rule for the individual assessment of strata lots in all cases. Instead, s 2(7) had been introduced to address the uncertainties which arose with the introduction of strata subdivision. Section 2(7) thus clarified the position of subsidiary proprietors by clarifying that the annual value of a strata lot was to be assessed as if it were a freehold estate in land.

8 The Appellant argued that the Respondents were not entitled to amalgamate the Appellant's property tax accounts for the following reasons:

(a) the statutory provisions required each lot to be assessed separately;

(b) the Respondents had misapplied the *rebus sic stantibus* principle on the facts;

(c) the Respondents had no basis to amend the Valuation List; and

(d) the Respondents had acted unreasonably or improperly by their act of amalgamating the accounts.

9 The main issues which arose in this appeal were as follows:

(a) What was the proper assessable entity, for the purposes of determining annual value,

according to the PTA?

(b) Did the Respondents have the right to reconfigure and amalgamate several subject properties into one property account if those properties were occupied as a single integral unit?

(c) Had the *rebus sic stantibus* principle been misapplied?

(d) Should the Respondents' act of amalgamation be impugned on the basis that they had acted improperly in doing so?

10 It would be useful at this stage to set out a chronology of relevant events which led to the Respondents' decision to amalgamate the lots.

July 2001	The government announced an off-budget relief package which included, *inter alia*, 25% property tax rebate for commercial and industrial properties for one year with effect from 1 July 2001.
12 October 2001	The government improved the off-budget relief package to, *inter alia*, provide for a fixed rebate of $8,000 per year for each commercial and industrial property plus a further rebate of 30% on the balance property tax payable (if any).
2 November 2001	The Property Tax (Non-Residential Buildings) (Remission) (No 2) Order 2001 (GN No S 553/2001) ("the 2001 Remission Order") came into effect. The new property tax rebate scheme was to take effect on 1 July 2001 and end on 31 December 2002.
17 May 2002	The Appellant bought the subject properties from the Building's owner, Wisma Development Pte Ltd. Each purchased lot had a separate strata title issued with its own individual SSCT and was identified as a lot on the strata title plan. The Appellant requested the Respondents to amalgamate the property tax accounts in certain instances. The Respondents acceded to the request and amalgamated the accounts for seven of the tenants resulting in 138 property tax accounts for the 155 subject properties.
21 November 2002	The Respondents issued notices under s 20(2) of the PTA to reconfigure and amalgamate some of the property tax accounts.

8 March 2003	The Property Tax (Non-Residential Building) (Remission) Order 2003 (GN No S 120/2003) came into operation. It provided for the remission of tax and payments in lieu of tax in respect of any building or part thereof.
7 May 2003	The Property Tax (Commercial Property) (Remission) Order 2003 (Cap 254, O 19, 2004 Rev Ed) ("the 2003 Remission Order") came into effect.
31 December 2003	The property tax rebates granted pursuant to the remission orders ended.

The decision below

11 The judge was of the view that the remission orders did not supersede established principles of assessment and valuation. He held that the *rebus sic stantibus* principle remained relevant in determining if each lot ought to be assessed separately or as part of an integral whole. The judge was of the view that s 2(7) of the PTA did not make it mandatory for the Respondents to assess each strata lot separately. Relying on the Singapore parliamentary reports as well as ss 6 and 10 of the PTA, the judge held that the Respondents could use an amalgamated basis of assessment because the lots, when combined, could be regarded as a "tenement" under s 10 and thereby be subject to property tax on a combined basis.

Parties' arguments and our decision

12 The Appellant alleged that the judge erred in relying on the 2003 Remission Order as he overlooked the fact that the language used in the 2003 Remission Order was different from that in the 2001 Remission Order. The Appellant submitted that an interpretation of the 2001 Remission Order confirmed that each lot must be separately assessed. The Respondents, however, countered that the 2001 Remission Order was silent on the issue of whether rebates had to be given according to strata titled lots. They asserted that the 2003 Remission Order provided support for their view that the *rebus sic stantibus* principle applied.

What was the proper assessable entity?

13 A strata lot would undoubtedly be entitled to rebates under the 2001 Remission Order. This interpretation would be consistent with the plain language of the 2001 Remission Order, which used the phrase "building or part thereof". Second, this interpretation comports with s 2(7) of the PTA. Section 2(7) states:

> In assessing the annual value of any property which comprises a lot the title of which is issued under the Land Titles (Strata) Act (Cap. 158) —
>
> (*a*) the subsidiary proprietor of the lot shall be deemed to be the owner thereof;
>
> (*b*) the annual value of the lot shall be determined as if that lot comprised a freehold estate in land; and
>
> (*c*) no separate annual value shall be attributed to the land upon which the subdivided

building stands.

Clearly, strata lots are capable of separate ownership and, as a matter of logic, it must follow that strata lot owners should to be entitled to rebates on the basis of their strata ownership (although they do not own a freehold estate in land).

14 However, we did not accept the Appellant's submission that the phrase "building or part thereof" created a blanket rule for strata lots to be separately assessed. The 2001 Remission Order only extended to render strata lots separately assessable; it was silent on whether such lots could be assessed on an amalgamated basis.

15 We agreed with the judge's view that the lacuna could be remedied by reference to the terms of the 2003 Remission Order. Clause 2 of the 2003 Remission Order states:

> In this Order —
>
> "commercial property" means —
>
> (*a*) …
>
> (*b*) any premises used as —
>
> (i) a shop;
>
> (ii) an office;
>
> …

16 The 2003 Remission Order thus envisaged that the premises in question were to be used as a shop or a restaurant, rather than as a part thereof. This, by necessary implication, meant that the strata lot should be assessed on the basis of the *rebus sic stantibus* principle. Consequently, if a shop occupied a single strata lot, rebates would be assessed on the basis of the lot as a separate unit. However, if a shop comprised an integration of several strata lots, these strata lots would be assessed as a whole for purposes of tax rebates.

17 Therefore, the Remission Orders did not require lots to be separately assessed. It was open to the Respondents to assess lots on an amalgamated basis, where they were occupied as multiple contiguous lots. Consequently, s 2(7) of the PTA would allow the Respondents to assess strata lots on a combined basis. This was clear from the following extract of the parliamentary debates (see *Singapore Parliamentary Debates, Official Report* (31 July 1968) vol 27 at col 728) that introduced the present s 2(7):

> Since the Land Titles (Strata) Act was enacted in 1967, it is advisable to provide specifically for owners of flats to be subject to assessment annually under the Property Tax Ordinance. That Act introduced a new concept of ownership, and flat owners registered under that Act may have doubts as to what their property tax position is, since they are owners of property situated "in the air" and thus somewhat different from the usual type of ownership attached to the ground.
>
> To this end, a new paragraph (*e*) [now s 2(7) of the PTA] is added to the proviso to section 2 of the Property Tax Ordinance. The new paragraph seeks to ascertain, firstly, who the owner of each such lot or flat "in the air" is. *Secondly, it states that the annual value of the flat is to be assessed in the same manner as any other freehold estate in land*. And, thirdly, it excludes the

land on which the flats are built from assessment when the flats are already individually assessed.

[emphasis added]

18 While the Appellant was correct in pointing out that s 2(7) clarified the legal position of strata lots (which were a new concept in Singapore), that section did not go so far as to require each strata lot to be individually assessed. It was a quantum leap in logic to allege that individual assessment was mandatory, by virtue of the statement that the annual value of flats was to be assessed in the same manner as a freehold estate in land. The reference to the mode of assessment merely served to clarify the position of strata lot owners by setting out the principles on which their lots would be assessed. The same principle of assessment applied to freehold estates in land was to apply to strata lots. Therefore, the *rebus sic stantibus* principle was equally applicable to strata lots. As such, where several strata lots were occupied on a combined basis, it was open to the Respondents to value them as a whole.

19 The Appellant had advanced a second argument. The Appellant highlighted that mandatory language was used in s 2(7) ("shall" and "deemed"), such that s 2(7) should be regarded as paramount to the *rebus sic stantibus* principle. It cited *Toh Kim Soo Realty Pte Ltd v Chief Assessor (Singapore)* VRB Appeal No 328 of 1981 ("*Toh Kim Soo*") for the proposition that the Respondents lacked power under the PTA to amalgamate or subdivide lots. In *Toh Kim Soo*, the VRB held that the Chief Assessor had no power to partition a large parcel of land into several parts and attribute a separate annual value to each part. This was despite the fact that various portions of the land had been zoned differently under the Planning Act (Cap 232, 1985 Rev Ed).

20 We were of the view that *Toh Kim Soo* did not assist the Appellant's case. The facts of *Toh Kim Soo* were readily distinguishable from the present case. First, the parcel of land in *Toh Kim Soo* had not been subdivided whereas the subject properties in the present case have been issued with separate SSCT. Next, the Chief Assessor in *Toh Kim Soo* had attempted to do something wholly different from that contemplated on our facts. In *Toh Kim Soo*, the Chief Assessor sought to give more than one annual value to a particular property. This was not authorised by the provisions in the PTA, either expressly or impliedly. In contrast, the Respondents here gave an annual value to several properties which had been combined and were occupied as an integral whole.

21 It seemed to us that the actions of the Respondents fell within the ambit of the PTA. As the judge observed (at [28] of his grounds of decision), "tenement" was not defined in the PTA but its general meaning was extremely wide; it could include part of a house that was structurally divided and separated so as to be capable of being a distinct property. Thus, where several lots are combined and occupied as one, they would be regarded as a tenement. The Respondents would thus have the power to assess their annual value on a combined basis, under s 10 of the PTA which relevant subsections state:

(1) The Chief Assessor shall cause to be prepared a list, which shall be known as the Valuation List, of all houses, buildings, lands and tenements.

…

(4) Each part of a building divided laterally or horizontally into parts in such a manner that the owner, either solely or jointly with other owners, of one part is not also the owner either solely or jointly with the other owners respectively of any other part, shall for the purpose of this Part be deemed to be a building.

(5) Each part of a partially completed building divided laterally or horizontally into parts shall for the purposes of this Part be deemed to be a building if it is used for human habitation or otherwise.

22 The Appellant, however, took the position that the amalgamated assessment of each lot would give rise to anomalous outcomes, citing the following examples in which such results would arise:

(a) where the strata lots are owned by *different* owners but rented to the *same* tenant ("Situation 1");

(b) where the strata lots are owned by the *same* owner but rented to *different* tenants ("Situation 2"); and

(c) where the strata lots are owned by the *same* owner and rented to the *same* tenant (as is the case here) ("Situation 3").

Contrary to the Appellant's fears, allowing for the possibility of amalgamated assessment would not create anomalous results in any of the three situations they had posed.

23 The Appellant put forth two objections to the amalgamated assessment of multiple contiguous lots. First, it would be difficult to assess the annual value of each strata lot, as the lots may have different annual values depending on various factors such as their frontage and lease terms. Second, it would be unfair for the rebates to be shared amongst the different owners.

24 While it may be difficult to make an accurate assessment as to the annual value of each strata lot, this is not an insurmountable obstacle such as to warrant separate assessment in all cases. Moreover, the Appellant was inaccurate in its assertion that the rebates would be shared amongst the various owners. On the facts of Situation 1, each owner would be entitled to his own set of rebates. This is because the PTA focuses on the tax liability of each owner. Thus, while a "combined" annual value would be given to the integral unit on the basis of its use as a single shop, the tax liability (and eligibility for rebates) of each property owner would be apportioned accordingly.

25 As regards Situation 2, the Appellant cited an illustration of a person (A) who owned ten lots which were rented out to a single tenant, and who then sold one lot to B. In the event that B failed to pay his property tax on time, the Respondents would be entitled under s 39 of the PTA to take enforcement action against "the premises in respect of which the arrears are due". Injustice would result if the Comptroller were allowed to enforce action against all ten lots on the basis that they comprised one assessable entity. Instead, the Comptroller should only be able to enforce in respect of B's single lot, and not against A's nine lots. B's lot should be viewed discretely from A's lots for the purposes of enforcement. However, this was inconsistent with the determination of property tax rebates where all ten lots were regarded as one assessable entity.

26 We rejected these arguments. Logic and common sense dictated that the Comptroller should only be able to take action against B's lot should B default on his payments for property tax. Individual tax accounts would be created in such cases and the tax liability of each owner would be apportioned accordingly. As such, A would not suffer the consequences of B's default.

27 In any case, Situations 1 and 2 were irrelevant as the present case only called into question the legal position *vis-à-vis* Situation 3.

28 Finally, the Appellant claimed that allowing for the amalgamation of property tax accounts would be unwise in Situation 3 because the same amount of rebates would be granted to a large retail store and a smaller retail store. Larger retail stores would thus derive less benefit from the rebates, as they employed more staff and had higher overheads. Ostensibly, this would not accord with parliamentary intent to help businesses ride out the economic downturn since the larger retail stores would not be able to minimise job losses.

29 We also rejected this submission. The reality of the situation was that the assessment of annual value accorded with the manner in which the strata lots were used. If larger businesses indeed operated as an integral unit over several lots, they ought to be and were assessed as a single business entity for property tax purposes. Parliament did not intend for the remission orders and rebates to override existing principles of valuation. The *rebus sic stantibus* principle of assessing properties as they stood and were used would continue to apply.

Whether the* rebus sic stantibus *principle was correctly applied

30 We turn next to consider whether the *rebus sic stantibus* principle had been correctly applied to the facts of this case. Whilst the parties agreed that the *rebus sic stantibus* principle applied, they parted company when identifying the manner in which the principle should be applied.

31 The Appellant submitted that the principle should be applied only after the assessable entity had already been ascertained. Thus, a correct application of the principle would require the assessable entity to be first identified in accordance with the provisions of s 2(7), before the *rebus sic stantibus* principle was applied to determine the annual value of such assessable entity. On the other hand, the Respondents contended that the *rebus sic stantibus* principle should be adopted in assessing the annual value of the subject properties. The *rebus sic stantibus* principle encompassed two limbs of "physical condition" and "use", and these limbs could be used to identify the assessable entity.

32 We rejected the Appellant's arguments. The *rebus sic stantibus* principle of valuation states that the assessable entity should be valued according to its physical nature and condition as well as to its usage. There are therefore two aspects to the principle. The first aspect of the principle necessitated due regard to the actual house or other property as it in fact is (*per* Scott LJ in *Robinson Brothers (Brewers), Limited v Assessment Committee for the No 7 or Houghton and Chester-le-Street Area of the County of Durham* [1937] 2 KB 445 at 468). In the light of Scott LJ's observations, the Respondents could not overlook the fact, upon a site inspection, that the party walls had been removed between strata lots to create integral units.

33 It was the Appellant's claim that pre-2004 English cases such as *Irving Brown & Daughter v Smith* [1996] 2 EGLR 183 ("*Irving Brown*") and *Scottish & Newcastle Retail Ltd v Williams* [2001] 1 EGLR 157 ("*Williams*") were irrelevant to the issue in this case as the application of the *rebus sic stantibus* principle in these cases did not deal with properties under the strata titles system, and involved situations with one house and a single title.

34 The Appellant's submission in this regard is flawed. Section 2(7) of the PTA did not displace any principle of assessment established under the common law. Section 2(7)(*b*) merely provided that the annual value of a strata lot was to be assessed as if it was a freehold estate in land. Consequently, the *rebus sic stantibus* principle should still apply in assessing the annual value of the subject properties. Cases such as *Irving Brown* and *Williams* are thus persuasive authorities as to the manner in which the *rebus sic stantibus* principle should be applied.

35 Counsel for the Appellant misinterpreted the purport of s 2(7). As was pointed out by the Respondents' counsel, the word "deemed" was not intended to override existing principles of assessment. Instead, it merely served to clarify the tax position of strata lot owners under the strata regime. This was evident from the parliamentary debates of 31 July 1968, where the rationale behind the LTSA and s 2(7) was enunciated as set out in [17] above.

36 It is pertinent to note that ss 2(3) and 2(5) of the PTA provide a statutory formula for the assessment of annual value. This is to be contrasted with s 2(7) which does not specify a similar formula. It can therefore be inferred that common law principles of valuation, such as the *rebus sic stantibus* principle, remain relevant in an assessment pursuant to s 2(7).

Whether amendment of the Valuation List was warranted

37 Section 20(1) of the PTA entitles the Chief Assessor to amend the Valuation List where it is or has become inaccurate in any material particular. The various situations in which such inaccuracies may arise are set out in s 20(2) of the PTA. The relevant portions of s 20(2) read as follows:

> For the purposes of this section, the Valuation List shall be deemed to be inaccurate in a material particular where —
>
> (*a*) the Chief Assessor is of the opinion that the annual value of a property included in the Valuation List does not correctly represent the annual value evidenced by —
>
> (i) the rental obtained from a tenant in respect of a property previously vacant or previously occupied by the owner;
>
> (ii) the increased or decreased rental obtained in respect of the letting out of that or similar property; or
>
> (iii) the consideration paid or value passing on the sale or transfer, directly or indirectly, of any estate or interest in that or similar property, including the sale or transfer of 75% or more of the issued ordinary shares of a land-owning company, whether or not the Chief Assessor exercises the option given in section 2(3);
>
> …
>
> (*c*) any new building is erected or any building is rebuilt, enlarged, altered, improved or demolished;
>
> …

38 The Respondents relied on ss 20(2)(*a*) and 20(2)(*c*) to justify an amendment of the Valuation List.

39 The Appellant submitted that the Respondents were not entitled to amend the Valuation List in respect of the lots in connection with all 45 appeals. The Appellant did not take issue with the fact that the Respondents had amended the Valuation List. The Appellant conceded that an amendment was justified because there had been changes in rental in respect of 18 appeals. Instead, the Appellant's criticism related to the manner in which the lots had been assessed. The Appellant took the position that s 2(7) of the PTA required the lots to be assessed separately. In relation to the other 27 appeals, the Appellant argued that the Respondents had no right to amend the Valuation List

in respect of the lots in connection with these appeals. Section 20(2)(*a*) had not been made out in relation to these appeals, as the Respondents had not noted any changes in rental for the lots involved.

40 The Appellant's objections in relation to the 18 appeals were unjustified. A plain reading of s 20(2)(*a*) would show that the circumstances justifying an amendment had been made out (*viz* rental changes) and which the Appellant acknowledged. Section 2(7) did allow the lots to be assessed on an amalgamated basis.

41 The Appellant's same argument in relation to the other 27 appeals did not advance its case. Admittedly, the Appellant had *prima facie* shown that the Respondents had wrongly exercised its powers to amend the Valuation List under s 20(2)(*a*), given that there were no changes in rental for the lots involved. However, this did not detract from the fact that the Respondents were nonetheless entitled to amend the Valuation List on an alternative ground, *viz*, alterations had been made to the units within the meaning of s 20(2)(*c*). A site inspection revealed the existence of alterations to the various units, thereby allowing the Respondents to amend the Valuation List pursuant to s 20(2)(*c*) of the PTA.

42 The crux of the Appellant's arguments was that s 20(2)(*c*) of the PTA did not apply as the alterations made to the subject properties were merely changes to the "internal partitioning" of a building. The Appellant attempted to rely on the definition of "building" in s 2 of the PTA ("any structure erected on land and [which] includes any house, hut, shed or similar roofed enclosure") and contended that "building" referred to the Building as a whole. On this view, the dividing walls between the strata units were merely "internal partitioning" and thus fell outside the ambit of s 20(2)(*c*).

43 Counsel for the Respondents revealed that a site inspection had shown that the subject properties bearing different unit numbers had been used and occupied as integral units; dividing walls and partitions had been removed, such that several lots were occupied as a single shop or unit.

44 We accepted the Respondents' argument that the alterations made to the units fell within the ambit of s 20(2)(*c*). The judge had correctly pointed out that the Appellant had erred in regarding the whole of the Building as a "building". It was equally possible for each strata unit to constitute a "building" within the meaning of s 2 of the PTA. The reference in s 2 that the structure must be "erected on land" did not require that the structure be erected on a foundation built into the ground. This was evident from the comments of Dwyer J in the Australian case of *Subiaco Municipal Council v Walmsley* (1930) 32 WALR 49 at 56–57:

> The word "erect" would seem to cover an act of setting up above the surface of the ground in a permanent or quasi-permanent position, and, therefore, to denote something which is not necessarily built on a foundation let into the ground, and which also may differ from placing in a temporary position for a passing purpose. Direct fixation into the soil is in my view not a requisite to "erecting." Such structures as barricades, scaffolds and hoardings might properly be said to be erected, although they have no foundations below the surface.

In the light of Dwyer J's comments, it is possible that the strata lots in the Building may qualify as "buildings" because of the words "similar roofed enclosures" in s 2 of the PTA.

45 Section 10(4) of the PTA, as set out in [21] above, provides support for the view that the strata lots in the Building may qualify as "buildings". The wording of s 10(4) makes it clear that a subdivided part of a building can be regarded as a "building" for the purposes of property tax.

46 In *Intercontinental Properties (Pte) Ltd v Chief Assessor, Singapore* [1980–1981] SLR 561 ("*Intercontinental Properties*"), F A Chua J held that each unit in an apartment block was a "building" by virtue of s 10(3) of the Property Tax Act (Cap 144, 1970 Rev Ed) (re-numbered s 10(4)) of the PTA). However, Chua J opined that each unit would only constitute a "building" if it was separately owned.

47 On the facts of the present case, the owners of the various strata lots are the same (*ie*, the Appellant). Beneficial ownership remained vested in the Appellant since the Appellant had merely leased out the strata lots to various tenants. Since there was no separate ownership, we cannot rely on s 10(4) to reach our conclusion that s 20(2)(*c*) of the PTA applied.

48 The Appellant had argued that absurd consequences would ensue if the removal of dividing walls between distinct strata lots constituted "alterations" of which the Respondents had to be notified. The Appellant cited an example of a law firm which rented an entire floor from a landlord, and then changed the configuration of the floor by increasing the number of rooms to accommodate new lawyers joining the firm. The Appellant argued that this should not constitute an "alteration" to the "building" for which the Respondents have to be notified, because the law firm continued to occupy the same space and pay the same rental. The Appellant submitted that such alterations were minor and non-structural in nature and did not affect the annual value of the "building". If the approach taken by the VRB and the judge was applied, an unduly onerous burden would be imposed on tenants as the law firm would have to notify the Respondents of the alterations despite the fact that they were minor in nature.

49 The Appellant's concerns were unfounded. The example cited by its counsel was readily distinguishable from the facts of the present case. The Appellant's example involved a situation where alterations were made to the internal partitions of a building. Under such circumstances, it would be unnecessary for the tenant to inform the Respondents of the alterations, especially if those alterations did not affect the annual value of the "building". The facts of the present case are far removed from the Appellant's example, as here they involved the demolition of walls between separate lots or "buildings". The demolition of dividing walls would clearly affect the annual value and rental of the strata lots in question. For instance, a larger frontage or shop unit could result in a higher annual value, because rental prices are generally commensurate with the size of the premises (all other factors being equal). The Respondents were thus entitled to amend the Valuation List on this basis.

Whether the Respondents acted in a manner which did not promote the policy and objectives of the remission orders

50 The Appellant alleged that the Respondents' decision to amalgamate the subject properties was fundamentally flawed. The Appellant made much of the fact that the net effect of the amalgamation exercise was to reduce the amount of property tax rebates which shop owners would be entitled to. This, according to the Appellant, ran counter to the intent of the remission orders, which was to reduce business costs and ensure the survival of businesses despite the economic downturn.

51 The mere fact that considerations which could have been taken into account were ignored will not *ipso facto* result in a decision being set aside. Rather, it is only when the relevant statute "expressly or impliedly identifies considerations *required to be taken into account* by the authority as a matter of legal obligation" [emphasis added] that a decision will be invalid because relevant considerations were ignored (*per* Cooke J in *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 at 183).

52 The Respondents, however, argued that parliamentary intent should not be given supremacy over established principles of assessment. While conceding the force of the Appellant's submissions on parliamentary intent behind the remission orders, the Respondents submitted that these should not displace established principles of assessment (such as the *rebus sic stantibus* principle).

53 We agreed that while the intent of the remission orders may have been to reduce the property tax liabilities of shop owners, this did not mean that all properties should be separately assessed so as to maximise property tax rebates. Instead, the purport of the remission orders must be seen in conjunction with existing principles of valuation, such as the *rebus sic stantibus* principle, which required properties to be assessed on the basis of their actual usage. This was necessary to avoid illogical results. As an example we cite the situation where several strata units are occupied as a single and integral shop. Wholesale adherence to parliamentary intent would require us to disregard established principles of valuation in order to enhance the amount of property tax rebates enjoyed by the shop owner. This would effectively result in the distortion of legal principles and give rise to illogical results. Assessing the shop as if it comprised of several individual strata lots would be impractical; it would not accord with the reality with which the strata lots were being used.

54 Thus viewed, the Appellant's contention that the Respondents had acted in a manner which undermined the policy and objectives of the remission orders was unsustainable.

Did the Respondents act unreasonably or improperly in amending the Valuation List?

55 As for the Appellant's argument that the Respondents had exercised their discretion for an improper purpose (*ie*, to increase revenue collections), this was not made out.

56 On the facts, the provisions of the PTA did not expressly require the Respondents to take into account the benefits of individually assessing each strata lot. Neither did the Appellant adduce concrete evidence showing that the Respondents' decision to amalgamate the lots was actuated by extraneous considerations such as the perceived need to increase revenue collections. Consequently, the Appellant's claim that the Respondents had exercised their power for improper purposes was rejected.

Whether the presumption of regularity of official acts had been rebutted

57 The Appellant also sought to impugn the Respondents' act of amalgamation on another ground: it argued that the Respondents were not entitled to invoke the presumption of regularity in their favour. While acknowledging that the presumption in illus (*e*) of s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) could apply to our facts, the Appellant claimed that this presumption had been rebutted as a result of the Respondents' actions: the Respondents had acted inconsistently with their prior practice for the past 13 years where they had individually assessed the value of each strata lot. The Respondents had suddenly changed their practice in November 2002, to assess the lots on an amalgamated basis, and had thereby reduced the property tax rebates which strata lot owners were entitled to.

58 At the outset, it must be noted that a party seeking to rebut the presumption of regularity faces an uphill task (see, *eg*, *Ee Kim Kin v The Collector of Land Revenue, Alor Gajah* [1967] 2 MLJ 89; *Dow Jones Publishing Co (Asia) Inc v AG* [1989] SLR 70). The party attempting to rebut the presumption of regularity must show concrete proof that the official act in question had not been performed in good faith. The statutory presumption embodied in illus (e) of s 116 of the Evidence Act gives force to the important precept that decisions made by authorities in the exercise of their discretion should generally be upheld in the absence of specific proof that the authorities had

exercised their powers in bad faith.

59 The Appellant failed to rebut the presumption in the present case. Certainly, the Respondents' decision to amalgamate the lots with retrospective effect coincided with the announcement of the remission orders. However, the timing and retrospective nature of the Respondents' decision was insufficient in itself to rebut the presumption of regularity. The Appellant had not adduced tangible evidence that the Respondents' decision to amalgamate the subject properties was actuated by an intent to deprive the Appellant of property tax rebates. Neither did the Appellant show that the Respondents had exercised their power of amalgamation solely for the purposes of maximising their tax collections.

60 On the contrary, the Respondents had been equally swift to change the manner of assessment even when this resulted in a reduction in tax collections. This was evident from the fact that the Respondents had reassessed some properties on an individual basis in 2003 ("the 2003 reassessment") when they were no longer used as integral units and had been separated into their individual units. The 2003 reassessment had been carried out despite the fact that this was prejudicial to the Respondents' interests, in so far as it resulted in a reduction in property tax collections. The Respondents' reassessment of the lots in 2003 lent weight to the Respondents' argument that it had acted properly in the discharge of its functions. It could well be that the Respondent's previous inaction in not amalgamating the lots for assessment purposes was wrong.

Whether the Respondents' act of reassessment negated the possibility of an improper motive on its part

61 The Appellant took the position that the Respondents could not rely on the 2003 reassessment to negate a finding of improper motive on their part. According to the Appellant, the 2003 reassessment was necessary to ensure consistency with the Respondents' practices in 2002. Had the Respondents not reassessed the "downsized" units, they would be acting arbitrarily and inconsistently with their practice of assessing the units based on the *rebus sic stantibus* principle in 2002. Although the Respondents had been consistent in their practices for 2002 and 2003, these practices were a marked departure from their pre-2002 methods of assessment (when the properties were individually assessed). Furthermore, while the reassessment increased the amount of property tax rebates which the Appellant was entitled to, this did not detract from the fact that the Appellant would still suffer an overall loss of property rebates. This was because most of the lots were still assessed on an amalgamated basis.

62 Admittedly, the Respondents may have adopted a somewhat inconsistent practice prior to 2002, by agreeing to amalgamate certain property tax accounts upon the Appellant's request and maintaining separate property tax accounts for other accounts. However, the Respondents' decision to amalgamate the accounts in 2002 marked the start of a consistent assessment policy – that the properties were to be assessed in accordance with the *rebus sic stantibus* principle. Thus, the Respondents proceeded to combine the property tax accounts of strata units which had been occupied as a single integral unit. The application of the *rebus sic stantibus* principle was followed through in 2003, when "downsized" units were separately assessed. Thus viewed, the Respondents' acts in 2002 and 2003 were underpinned by a common and consistent principle – that of assessing properties based on their actual physical state and condition.

The decision in the Jalan Nuri cases

63 In their arguments, counsel for the Appellant placed heavy reliance on the Chief Assessor's decision in the Jalan Nuri cases. They submitted that these cases stood for the proposition that

strata lots ought to be individually assessed. In the case of 25 Jalan Nuri (Mukim 25 Lots 1059 and 1060), where a house and a garden each occupied a separate lot, the Chief Assessor had assessed each lot separately. Thus, the Chief Assessor assessed the lot with the house based on the lettable value of the house and taxed at the owner occupier's rate of 4%, while the lot with the garden was taxed based on 5% of the capital value of the vacant land and did not enjoy the owner occupier's concessionary rate of tax. Separate assessment was undertaken despite the fact that the garden had been physically used as an integral part of the house. This method of assessment was repeated in the case of 21 Jalan Nuri (Mukim 25 Lots 1057 and 1058).

64 How are the Jalan Nuri cases to be reconciled with the present facts? This is especially so as the facts of the Jalan Nuri cases were similar to the present facts – in the Jalan Nuri cases, there were no physical walls or dividing lines between the house and garden as with the present case, where there were no party walls between the strata lots.

65 In their submissions, counsel for the Respondents sought to persuade us that the principles applied in the Jalan Nuri cases were distinguishable from our facts which pertained to shop units which had been used on an amalgamated basis, not residential units. In any case, the Respondents contended, the VRB had actually overruled questions in relation to the Jalan Nuri cases, hence they were irrelevant for this present appeal.

66 We were of the view that the Jalan Nuri cases were wrongly decided. The reality of the situation was that the properties in the Jalan Nuri cases had been used as a single and integral whole, despite their occupying more than one lot. Consequently, the Chief Assessor should have assessed the lots as an integral whole, as he had done on the facts of the present case. The Chief Assessor erred in assessing the house and the garden of the property separately on a different basis.

67 Although the property owners in the Jalan Nuri cases lodged an appeal against the Chief Assessor's decision, they later declined to pursue their appeal. There was therefore no opportunity for the position to be clarified by the courts.

Conclusion

68 While statutory provisions did not expressly allow the Respondents to assess strata lots on an amalgamated basis, parliamentary intent and the *rebus sic stantibus* principle provided for this possibility. The Respondents were also entitled to amend the Valuation List on the facts, as the annual values of the strata lots had become inaccurate in a material particular. Finally, the Appellant did not adduce sufficient evidence to show that the Respondents had exercised their powers improperly and unreasonably. The court below was thus correct in finding that the Appellant had not made out its case and that the Respondents were entitled to amalgamate the Appellant's property tax accounts. For these reasons, we dismissed the appeal.