Novelty Dept Store Pte Ltd
v
Collector of Land Revenue

[2016] SGCA 15

Court of Appeal — Civil Appeal No 11 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Chan Sek Keong SJ
18 January 2016

Land — Compulsory acquisitions — Compensation payable

11 March 2016

Sundaresh Menon CJ (delivering the grounds of decision of the court):

1 This was an appeal against the decision of the Land Acquisition Appeals Board ("the Board"), affirming the award of compensation made by the respondent, the Collector of Land Revenue ("the Collector"), for the compulsory acquisition of 31 Tuas West Drive. We dismissed the appeal in substance, varying only the costs order that was made below. We now set out the detailed grounds for our decision.

Background

2 The appellant, Novelty Dept Store Pte Ltd, subleased the acquired land (which we shall refer to as "the appellant's land") from Jurong Town Corporation ("JTC"). At the acquisition date, the land was owner-occupied and comprised a purpose-built four-storey detached industrial development.

3 On 11 January 2011 ("the acquisition date"), notice was given to the appellant that its land was to be compulsorily acquired for the public purpose of constructing the Tuas West Mass Rapid Transit Extension ("the acquisition exercise"). As at the acquisition date, there was a balance of approximately 44.7 years left in the tenure of the sublease.

4 On 18 August 2011, the Collector awarded statutory compensation of $13.2m to the appellant which was assessed to be the market value of the appellant's land ("the initial award"). This sum was derived by averaging the values of relevant sale transactions for comparison ("comparables") with suitable monetary adjustments being made to reflect differences between the subject property and the selected comparables. On 24 August 2011, the appellant lodged a notice of appeal against the initial award and subsequently filed its petition of appeal on 29 February 2012.

5 Notably, in the same acquisition exercise, the Collector had made an award of $29.2m for the acquisition of a property owned by Cambridge Industrial Trust ("the CIT Land"). The CIT Land was subject to an existing sale and leaseback arrangement ("SLB arrangement") at the acquisition date. The meaning of an SLB arrangement generally and its relevance to this acquisition specifically will become evident later in this judgment.

6 On 17 July 2012, the Collector made a supplementary award of $1m ("the supplementary award"), thus increasing the total statutory compensation to $14.2m ("the revised award"). This revision was made upon the Collector's discovery that one of the sales that had been used as a comparable in its valuer's expert valuation of the appellant's land had been a sale transacted by a company in liquidation. The Collector considered that on account of this fact, the sale price that was secured in that instance might not accurately reflect the market

value of the land in question. Despite the upward revision made by the Collector, the appellant proceeded with its appeal to the Board.

The appeal to the Board

7 Before the Board, the appellant claimed that the true market value of its land was $23m. This figure was derived from *three* separate valuations of the appellant's land which were provided by the appellant's valuers. These valuations took into account: (a) sales involving SLB arrangements; (b) sales involving JTC standard factories; and (c) sales occurring after the acquisition date.

8 The issues before the Board were these:

(a) whether those sales that were subject to SLB arrangements were suitable comparables for the purpose of valuing the appellant's land, which was not subject to an SLB arrangement;

(b) whether sales of JTC *standard* factories were suitable comparables for valuation given that the appellant's land is a JTC *purpose-built* factory; and

(c) whether sale transactions *after* the acquisition date were suitable comparables to value the appellant's land.

9 As regards sales involving SLB arrangements, the Board determined that such sales were unsuitable as comparables because they did not fairly reflect the market value of the appellant's land. The Board took the view that land that was subject to SLB arrangements tended to attract price premiums. This stemmed from various factors including the fact that such land came with an assured stream of revenue through the leaseback. The Board accordingly

considered that it would be speculative and conjectural to value the appellant's land by reference to such land because the appellant's land was not subject to any SLB arrangement at the acquisition date.

10 As regards sales involving JTC *standard* factories, the Board considered that these were generally inappropriate for consideration in valuing the appellant's land (which, as we have already noted at [2] above, was a JTC *purpose-built* factory). The Board considered that JTC *standard* factories tended to be more adaptable to a wide range of industrial uses compared to purpose-built factories, which tended to cater only to specific industrial uses. As a result, the former were in greater demand, and hence, commanded higher rent than purpose-built factories.

11 As regards sale transactions that were entered into after the acquisition date, the Board considered that without appropriate adjustments, these too were inappropriate for determining the value of the appellant's land. The Board considered that *after* the notification of the intended acquisition on 11 January 2011, prices of properties in the vicinity of the appellant's land that were not affected by the same acquisition exercise would rise by reason of the news that a Mass Rapid Transit Line would in time serve the area. Hence these could not be considered to reflect the value of the land at the acquisition date.

12 Finally, the Board also considered various other issues raised by the appellant in relation to adjustments made for such factors as time of sale, location, tenure and building condition among others. The Board rejected the appellant's argument that comparables transacted more than six months before the acquisition date should not be used. In markets with abundant sales, such as the Housing and Development Board property resale market, finding comparables transacted within a short period before acquisition date would not

pose difficulty. In contrast, when valuing industrial properties, it might not be practicable to restrict the selection of comparables to those transacted within six months of the acquisition date. In any event, appropriate adjustments could be made to account for any undue disparity in price owing to the lapse of time. The Board also rejected the appellant's contention that the Collector had not made adequate price adjustments to account for the general price trends. The appellant's contention was premised on two transactions between December 2009 and December 2010 which purportedly showed a general price rise of 82% within that period. The Board did not think it was appropriate to accept that this was a fair and accurate reflection of the general price trend in this period based only on two transactions.

13 In the circumstances, the Board held that the appellant had not discharged its burden of showing the inadequacy of the Collector's award of $14.2m and accordingly, dismissed the appeal. The Board also ordered costs of the appeal to the Board to be paid by the appellant pursuant to s 32(1) of the Land Acquisition Act (Cap 152, 1985 Rev Ed) ("the Act") on the basis that the amount awarded by the Board did not exceed the sum awarded by the Collector.

Issues arising out of this appeal

14 As a preliminary matter, it may be noted that under s 29(2) of the Act, a party who is dissatisfied with the award of the Board may only appeal to this court "upon any question of law". Thus, before turning to the substantive merits of the appeal, the appellant had to first satisfy this court that the issues it raised involved *questions of law*. In this regard, we were satisfied that this pre-requisite was met for reasons we set out below.

15 The appellant's arguments in this appeal centred essentially on the relevance or use of land subject to SLB arrangements as comparables. In this regard, the appellant contended that:

(a) the Board erred in finding that comparable sales involving SLB arrangements were unsuitable for valuing the appellant's land ("the valuation issue"); and

(b) the Board violated the appellant's constitutional right to equal treatment in determining the market value of the appellant's land ("the constitutional issue").

16 In addition, there was also a contention that the Board erred in awarding costs to the respondent ("the costs issue").

The valuation issue

Whether the valuation issue involved any question of law

17 The appellant submitted that the valuation issue raised a *question of law* because the Board had *erred in law* by failing to consider the highest, best and most probable use of the appellant's land and so had failed to value it within the terms of s 33(5)(*e*) of the Act. The respondent disagreed, contending that the valuation issue, in substance, required the determination of the proper method of valuing the subject land, and this was purely a matter of valuation that did not fall within the realm of the courts.

18 As to what constitutes a question of law that may be appealed under s 29(2) of the Act, the appellant drew our attention to the case of *Collector of Land Revenue v Mustaq Ahmad s/o Mustafa* [2002] 1 SLR(R) 413 ("*Mustaq*"). There, the issue was whether the Board was entitled to take into account

provisional planning permission that had not yet been granted at the time of the acquisition when awarding compensation for the appellant's land. The court found that this was a question of law that satisfied the threshold requirement in s 29(2) of the Act.

19 The appellant also referred us to the decision in *Swee Hong Investment Pte Ltd v Collector of Land Revenue* [2004] 1 SLR(R) 664 ("*Swee Hong*") and suggested that that was authority for the proposition that the court will not allow technical arguments relating to whether the issue concerns a question of law to prevent it from doing substantive justice if necessary. In our judgment, however, this was an inaccurate oversimplification. At [7] of the decision, the court had stated:

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

Clearly, whilst the difficulties of distinguishing between questions of fact and law were indeed alluded to, the court did not say that it was free to do substantive justice even when the threshold requirement had not been met. Rather, the court found it unnecessary to categorise the issue as one of law or fact because of the lack of any merit in the substantive appeal.

20 The respondent, on the other hand, argued that what the appellant had characterised to be errors of law were in fact findings of fact dressed up as questions of law. According to the respondent, the appellant had in fact raised

issues of valuation, which should properly be left to the Board. In its written case, the respondent also drew a distinction between an *error* of law and a *question* of law, arguing that the former is non-appealable. In support of this distinction, the respondent cited the following passage in the judgment of this court in *Northern Elevator Manufacturing Sdn Bhd v United Engineers (Singapore) Pte Ltd* [2004] 2 SLR(R) 494 ("*Northern Elevator*") at [19]:

> … [A] 'question of law' must necessarily be a finding of law which the parties dispute, that requires the guidance of the court to resolve. When an arbitrator does not apply a principle of law correctly, that failure is a mere 'error of law' (but more explicitly, an erroneous application of law) which does not entitle an aggrieved party to appeal.

21 At the hearing of the appeal, however, counsel for the respondent informed the court that she would not be pursuing this line of argument and accepted the application of a wider definition of a "question of law" which included an error of law. In our judgment, this concession was rightly made and is consistent with the approach taken in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 ("*Ng Eng Ghee*").

22 In *Ng Eng Ghee*, we rejected the argument that the narrower view of "questions of law" taken in *Northern Elevator* applied to appeals to the High Court from a decision of the Strata Titles Board on a collective sale application under the Building Maintenance and Strata Management Act 2004 (Act 47 of 2004). The court noted the importance of the *context* in which an appeal on legal issues is statutorily permitted in ascertaining the scope of the definition of "questions" or "points of law" (at [99]). A more expansive definition of "questions of law" should be preferred where appeals against statutory tribunals are concerned since such appeals would generally affect the wider public interest (at [100]), and the court should have greater oversight over such

tribunals so as to accord due protection to private rights (at [101]). In those circumstances, the court held that a broader definition of "questions of law" should be adopted to enable greater judicial supervision over the collective sale scheme.

23 In our judgment, the reasoning in *Ng Eng Ghee* applies with equal force to the present case which concerns the compulsory acquisition of land, a regime that pits the interests of the individual landowner against those of the State. Judicial oversight is thus a necessary and important check on the acquisition process. Parliament may have removed questions concerning the proper method of valuation from the realm of the courts but it does not follow that Parliament had also intended to preclude the courts from adjudicating on errors of law. For this reason, we took the view that a broader definition of a "question of law" should apply when invoking the right to appeal under s 29(2) of the Act.

24 Hence, we agreed with the appellant's submission that the valuation issue involved a matter of statutory interpretation which qualified as a "question of law" and was therefore susceptible to appeal under s 29(2) of the Act.

Whether the Board had erred in excluding sales involving SLB arrangements

25 The appellant's central contention was that the Board had erred in excluding sales involving SLB arrangements when assessing the value of the appellant's land, notwithstanding that the appellant's land was *not* subject to an SLB arrangement at the date of acquisition. Given the centrality of the SLB arrangements in this appeal, it will be useful to first set out a broad overview of what they entail. The Board provided a succinct explanation of SLB arrangements at [16] of its decision which we adopt.

26 In brief, an SLB arrangement is a finance-driven transaction in which a property owner sells the property and simultaneously leases it back from the purchaser. *From the seller/lessee's perspective*, the transaction is attractive because he has the opportunity to monetise the value of his property pursuant to the sale, while nonetheless retaining use of it pursuant to the leaseback (in exchange for an obligation to pay rent and outgoings for the period of use). *From the buyer/lessor's perspective*, the transaction is attractive because he acquires title to a plot of land along with a guaranteed stream of income for a fixed duration, on terms that are commonly more favourable to him than is the case with standard lease terms. An example of a more favourable term is the *triple net basis*, which is commonly adopted in these transactions and under which, the seller/lessee undertakes to pay for the repairs, maintenance and insurance, property tax and JTC annual land rent which would otherwise be borne by a buyer/lessor on standard lease terms.

27 The market values of properties that have subsisting SLB arrangements tend to be higher than those of properties not subject to such arrangements primarily because of the favourable lease terms including the recurring stream of income that they come with. This understanding of SLB arrangements is reflected in the available literature on the subject. In a report prepared by Colliers International, it is stated: "by virtue of a guaranteed stream of income that comes with a guaranteed tenant, a property that is sold with a SLB agreement is more valuable than one that is not." Further, the Board (at [17] of its decision) referred to the guidelines published by the Singapore Institute of Surveyors and Valuers and the International Valuation Standards Council, which contain the following statement:

> … Market Value is measured as the most probable price reasonably obtainable in the market at the date of valuation. It is the best price reasonably obtainable by the seller and the

> most advantageous price reasonably obtainable by the buyer. This estimate specifically *excludes an estimated price inflated* or deflated *by special terms* or circumstances such as typical financing, ***sale and leaseback arrangements***, special considerations or concessions granted by anyone associated with the sale, or any element of Special Value…
>
> [emphasis added in italics and in bold italics]

28 In the case at hand, the appellant's land was not subject to any SLB arrangement at the acquisition date and thus lacked the enhanced value that comes with properties that are subject to such arrangements. By seeking compensation by reference to comparables that featured an SLB arrangement, when the appellant's own land was not subject to this, the appellant was effectively seeking an unjustified windfall. There was in fact no basis for treating one as a suitable comparable to the other. In short, we were satisfied that the Board was correct in finding that sales involving SLB arrangements were not representative of the fair market value of properties not subject to such arrangements and were therefore inappropriate comparables when assessing the market value of the appellant's land.

29 Further, we note that the appellant's approach runs into a further difficulty because it would be artificial to estimate the enhanced value of the appellant's land by reference to a notional or imaginary SLB arrangement that the appellant claimed it could have entered into. As was observed by the Board at [16] of its decision, SLB arrangements can take many forms. In particular, they range from simple structured transactions with varying lease terms to more complex structures that are specifically customised to address the varied interests and needs of the parties. For a basic illustration of the range of SLB arrangements, it would be useful to refer to some examples of SLB comparables that were relied upon by the appellant's valuers and set out at [19] of the Board's decision.

	CL-2	**CL-3/ KF-3**	**CL-4/ KF-2**	**DTZ-1**	**DTZ-5/KF-1**
Address	51 Penjuru Road	73 Tuas South Avenue 1	1 Tuas Avenue 4	15A Tuas Avenue 18	30/32 Tuas Avenue 8
Lease-back terms	100% leased back to lessee for 5 years	100% leased back to lessee for 7 years	100% leased back to lessee for 3 years	100% leased back to lessee for 7+7 years	100% leased back to lessee for 5 years
Rent increment	1.5% p.a.	1.5% p.a.	2% p.a.	2% p.a.	1.5% p.a.
Triple net basis	Yes	Yes	Yes	Yes	Yes

30 It is evident from this that there can be a range of possible SLB arrangements; and it stands to reason that the price of properties subject to such arrangements would vary according to factors such as the length of the lease term, the rate of increase of rent during the term and the allocation of benefits and burdens in relation to the subject property. The more favourable the lease terms for the buyer/lessor, the higher the premium that the lease would attract. Given that no SLB arrangement had *in fact* been concluded at any time in the present case, any attempt to estimate the price of the potential SLB arrangement would be conjectural and purely speculative in nature.

31 We rejected the appellant's approach to valuation for a further reason. The appellant, an owner-occupier, would never find itself in the shoes of a buyer/lessor (such as CIT). Once the appellant entered into an SLB arrangement, it would naturally assume the role of a seller/lessee and would at that stage cease to be the owner. Hence, on that hypothesis, there would be no question of any compensation at all. The alternative hypothesis would be to consider whether a notional sale to a buyer/lessee would itself carry with it a premium such that the possibility of entering into such an arrangement should enhance the value of the appellant's land for the purpose of this valuation. But there were at least two difficulties with this:

(a) First, if the appellant was contending that the mere fact that land *could* be made subject to an SLB arrangement was sufficient to trigger an increase in value, one would have expected that there would be no difference at all in the values of land that was already subject to an SLB arrangement and land such as the appellant's which could be but was not yet subject to this. But that plainly was not the case as evident from the fact that there were notable differences in the values depending on whether or not the land in question was subject to an existing SLB arrangement.

(b) Second, these differences are unsurprising because the price at which land is transacted in an SLB arrangement will depend substantially on the terms of the leaseback, and as noted in the previous paragraph, this cannot be assessed on a theoretical or hypothetical basis.

32 In our judgment, these are fundamental difficulties that stand in the way of an owner-occupier whose land is *not* subject to an SLB arrangement but who

seeks to have it valued on the basis that it is subject to a notional or imaginary SLB arrangement.

33 For the foregoing reasons, we were satisfied that the Board had not erred in treating land subject to SLB arrangements as different from the appellant's land, and hence, as not comparable for the purposes of assessing the market value.

Whether the Board had erred in excluding sales involving JTC standard factories

34 At the hearing of the appeal, counsel for the appellant also argued that the Board had erred in excluding transactions involving the sale of JTC standard factories. As mentioned earlier (at [10]), the Board rejected these transactions on the basis that JTC *standard* factories and JTC *purpose-built* factories were two different types of factories altogether for the purpose of valuation. The Board explained that standard factories were more adaptable to a wide range of industrial uses as compared to purpose-built factories and were consequently more in demand and commanded higher rent. We saw no reason to interfere with the Board's finding on this issue and therefore rejected the appellant's contention.

The constitutional issue

35 The appellant also claimed to be aggrieved because it felt "discriminated against by the Board [and the] Collector as compared to the treatment accorded to CIT." Underlying the appellant's grievance is its assertion that the Collector had accepted three SLB comparables when valuing the CIT Land but not when valuing the appellant's land. One of the appellant's valuers, Ms Wong, had purportedly acted for CIT in the compulsory acquisition of the CIT Land and

had prepared a valuation based on the same three SLB comparables that were rejected by both the Collector and the Board in relation to the appellant's land.

Whether the Board had violated the appellant's constitutional right to equal protection

36 It is well-established that the equal protection of the law requires like to be treated alike. In the context of land acquisition, this court made it clear in the case of *Eng Foong Ho and others v Attorney General* [2009] 2 SLR(R) 542 (at [25]) that it would be absurd to suggest that the State ought to achieve equality of result in every single case of land acquisition. In the instant appeal, the appellant's constitutional challenge was unsustainable given our view that the appellant's land and the CIT Land were not alike for the purpose of assessing market value because the CIT Land was subject to a SLB arrangement whereas the appellant's land was not (see also [28] above). Accordingly, the appellant was not entitled to have its land valued using the same methodology or comparables as had been applied in relation to the CIT Land.

The costs issue

37 Section 32 of the Act provides:

> 32.—(1) *Where the amount awarded by the Board does not exceed the sum awarded by the Collector*, or where an appeal is withdrawn without any agreement being made by the parties thereto as to costs, *the costs of an appeal to the Board in either case shall be paid by the appellant.*
>
> (2) Subject to subsections (3) and (4), where the amount awarded by the Board exceeds the sum awarded by the Collector, the costs shall be paid by the Collector.
>
> …
>
> (4) If the claim of the appellant exceeds the amount awarded by 20% or more, he shall not be entitled to his costs.
>
> [emphasis added]

38 The Board awarded costs against the appellant under s 32(1) of the Act on the basis that the amount awarded by the Board ($14.2m) did not exceed the sum awarded by the Collector ($14.2m, being the revised award). The appellant submitted that the Board had erred in doing so and made two arguments to this end.

39 In its written submissions, the appellant argued that in determining whether "the amount awarded by the Board" exceeded "the sum awarded by the Collector", the Board was not entitled to include the supplementary award as part of "the sum awarded by the Collector". According to the appellant, the Act contemplates the issuance of only one award, that is, the initial award rendered by the Collector. The effect of this submission is that the appellant would not have to bear the costs of the appeal to the Board since the amount awarded by the Board (of $14.2m) exceeded the initial award of the Collector (of $13.2m). That having been said, the appellant also accepted that it was not entitled to costs by dint of s 32(4) of the Act which disentitles an appellant from recovering its costs if its claim was more than 20% in excess of the amount awarded by the Board. Therefore, the appellant submitted that the Board should have made no order as to costs.

40 During the hearing of the appeal, the appellant raised a further argument to support its contention that it should not have been saddled with the costs of the appeal to the Board. For reasons that will become apparent below, it will be more convenient to deal with this argument first.

41 According to the appellant, the Board had erred in failing to accept or have regard to the concession (made by the Collector's valuer) that a small upward adjustment to the award should have been made. If the Board had increased the award by a single dollar, so the argument went, the appellant

would have avoided having to pay the costs of the appeal to the Board. The details of the purported concession were as follows. The Collector's valuer had used the sale of 3B Toh Guan Road East as a comparable. The price for this property was negotiated and fixed on 6 January 2011 whereas the appellant's land was only acquired a few days later, on 11 January 2011. The point made was that if this comparable was to be used to value the appellant's land, its transaction price should have been adjusted upwards to reflect the rising market during the five- or six-day period between 6 and 11 January 2011. Under cross-examination by Mr Namazie (counsel for the appellant), the Collector's valuer conceded that there would have been some, albeit very small, increase in the value:

Witness (RW2):	… It would be maybe minus, er, point---a very small figure, it will be very close to zero. It wouldn't have---wouldn't have make much difference to the overall value after you, you know, take an average of the---the four figures, yah.
	…
	That's right. It could have been, er---
Namazie:	It should be a small plus.
Witness (RW2):	---a very small plus.
Namazie:	Plus.
Witness (RW2):	Extremely small plus.

42 In view of the concession made by the respondent's valuer, it stood to reason that the appellant was at least notionally entitled to a slight upward adjustment of the statutory compensation. Therefore, we accepted that the appellant should not be made to bear the costs of the appeal to the Board and varied the Board's costs order accordingly. For the avoidance of doubt, this argument was raised only in the course of the oral arguments and only in relation to the costs order. The appellant did not seek a revision of the statutory

compensation on this basis and we therefore did not interfere with the Board's substantive decision to affirm the compensation award of $14.2m.

43 In light of our view on this argument, it is not necessary for us examine the legal status of supplementary awards under the land acquisition regime. We would, however, venture to say that whilst the practice of issuing supplementary awards has not been expressly legislated for in the statutory framework, there appears to be no reason to doubt the legal status of such awards.

44 In Lim Chin Joo, "Compulsory Land Acquisition in Singapore" [1968] 10 MLR 1 at p 9, the learned author observed that so long as it does not prejudice the right of any person interested, the regularity of an *ex gratia* payment or a supplementary award will not be called in question. More importantly, Parliament appears to be cognisant of the practice of issuing supplementary awards and has implicitly endorsed it. Such endorsement is reflected in the speech of the then Minister for Law and National Development, Mr E W Barker, where he explained the need for funds to meet additional expenditure for land acquisition (*Singapore Parliamentary Debates, Official Report* (11 December 1967) vol 26 at col 524):

> Mr Speaker, Sir, the Development Estimates for 1967 provide the Land Office with a provision of $4 million under the title 'Land Acquisition for General Development'. This vote is intended to meet expenditure incurred under the following headings:
>
> > (a) Acquisition or purchase of land for general development, for example, fire sites, urban renewal, parcels of land which may be offered for sale to the State although not needed immediately for a public purpose but whose purchase is deemed desirable for long-term development, for example, the old Admiralty House in Grange Road purchased from the United Kingdom Government in 1963[;] land in Ulu Pandan purchased in 1967 to allow for the enlargement of a site adjacent thereto; and

> (b) ***supplementary awards arising from appeals to the Appeals Board or from settlement out of court;***
>
> (c) ***supplementary awards*** resulting from surveyings completed after the acquisition indicating that more land has been taken than originally stated and thereby necessitating additional compensation to the owner from whom the land was taken.
>
> Although an amount of $4 million was provided for, an additional sum of about $1½ million, approximately $1,448,567.89, further particulars of which I will give later, is now required as a result of increases in the awards made by the Appeals Board and in order to complete acquisitions approved this year. …
>
> [emphasis added in bold italics]

45 In our judgment, once the Collector had decided to make a supplementary award, the appellant was bound to consider whether it wished to proceed with its appeal. If it chose to withdraw its appeal within a reasonable time, it seems to us, at least on a provisional view and based on a purposive reading of s 32(1) of the Act, that the appellant would not then have been exposed to an adverse costs order. The alternative view based on a literal interpretation of the same provision would discourage settlements, and this seems to us to be an implausible view to take. That having been said, it was unnecessary for us to come to a conclusive view on this issue. These are but passing observations, and we leave this for a final pronouncement on another occasion when it is necessary for us to reach a decision on this issue.

Conclusion

46 For these reasons, we dismissed the appeal and varied only the costs order made by the Board. We awarded costs of the appeal to the respondent fixed at $35,000 (inclusive of reasonable disbursements).

Sundaresh Menon	Chao Hick Tin	Chan Sek Keong
Chief Justice	Judge of Appeal	Senior Judge

Mirza Namazie, Chua Boon Beng, Ong Ai Wern (Mallal & Namazie) for the appellant;
Aurill Kam, David Lee Yeow Wee and Elaine Liew (Attorney-General's Chambers) for the respondent.
