Management Corporation Strata Title Plan Nos 1298 and 1304 v Chief Assessor and Comptroller of Property Tax
[2005] SGHC 219

Case Number : OM 600003/2002

Decision Date : 29 November 2005

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : Oommen Mathew (Haq and Selvam) and Gopinath Pillai (Tan Peng Chin LLC) for the appellant; Tham Siok Peng (Inland Revenue Authority of Singapore) for the respondents

Parties : Management Corporation Strata Title Plan Nos 1298 and 1304 — Chief Assessor and Comptroller of Property Tax

Revenue Law – Property tax – Areas of common property of shopping centre licensed for use by various other parties – Areas used to place automated teller machines, retail kiosks, pushcarts and weighing scale – Whether such areas constituting taxable property under s 6(1) Property Tax Act – Section 6(1) Property Tax Act (Cap 254, 1997 Rev Ed)

Revenue Law – Property tax – Areas of common property of shopping centre licensed for use by various other parties – Whether assessing such areas for tax in addition to units in shopping centre resulting in double taxation

29 November 2005 *Judgment reserved.*

Woo Bih Li J:

Introduction

1 This motion is in respect of seven areas in the common property of Centrepoint Shopping Centre ("the Spaces"). The Chief Assessor had included the Spaces in the valuation list and the Comptroller of Property Tax ("the Comptroller") had issued notices to the Management Corporation Strata Title Plan Nos 1298 and 1304 ("the MCST") to inform the MCST that tax was payable on each of the Spaces. The Comptroller had allocated numbers to each of the Spaces and the MCST had granted licences to various parties to use the Spaces. Details of the numbers and usage are stated below:

	Unit No	Usage
1	#B1-K1	To place a weighing scale
2	#B1-K2 to #B1-K4	To place a temporary kiosk for promotions (Cold Storage)
3	#01-K2 to #01-K5	To place pushcarts for retail merchandise

4	#01-K6	Retail kiosk (Sins Choc Shoppe)
5	#01-K7	To place two automated teller machines
6	#01-K8	To place one automated teller machine
7	#01-K9	Retail kiosk (Dippin' Dots)

2 The MCST appealed to the Valuation Review Board ("the Board") against the decision of the Chief Assessor and of the Comptroller. The Board heard and dismissed the appeals. The present motion is the MCST's appeal against the decision of the Board.

3 The primary issue before me is whether the Spaces are taxable under s 6(1) of the Property Tax Act (Cap 254, 1997 Rev Ed) ("PTA"). Various arguments were raised by the MCST to support its contention that they are not.

4 Section 6(1) of the PTA states:

> As from 1st January 1961, a property tax shall, subject to the provisions of this Act, be payable at the rate or rates specified in this Act for each year upon the annual value of all houses, buildings, lands and tenements whatsoever included in the Valuation List authenticated under section 15 and amended from time to time in accordance with the provisions of this Act.

5 Therefore, the Spaces have to come within the meaning of at least one of the four categories, *ie*, "houses", "buildings", "lands" or "tenements" before they are taxable. I add that the four categories are not all exclusive of each other as there is some overlapping. For example, houses are also buildings. The Spaces must also have an annual value on which I will say more later. The Board was of the view that the Spaces come within the meaning of "tenements" and "lands", and possibly "buildings" as well.

Tenements

6 The Board relied on *Halsbury's Laws of England* vol 39(2) (Butterworths, 4th Ed Reissue, 1998) at para 78 on the meaning of "tenement" which states:

> **Meaning of 'tenement'**. The word 'tenement' is not restricted to lands and other matters which are the subject of tenure. Everything in which a person can have an estate of freehold, and which is connected with land or savours of the realty, is a tenement. Thus the word includes not only land, as the corporeal subject formerly of inheritance, but also all rights which before 1926 would have been heritable issuing out of land, or concerning, or annexed to, or exercisable over, land, although they do not lie in tenure, such as rents, commons and other profits à prendre and (formerly) tithes, and offices or dignities which descend to heirs, whether they relate to land or not.
>
> In popular language 'tenement' means a house or part of a house capable of separate occupation, and is sometimes so used in statutes; and, where the language or the purpose of the statute so requires, the expression is restricted to property capable of visible and physical occupation, and

does not include incorporeal rights.

There was no suggestion by the MCST that the tenure of a tenement must be freehold for the purpose of the PTA.

7 Mr Oommen Mathew, counsel for the MCST, relied on the dissenting judgment of Lord Sumner in *Farmer (Surveyor of Taxes) v Trustees of the Late William Cotton* [1915] AC 922 ("*Farmer*") to argue that the Spaces are not tenements. In that case, a large building which was once occupied as a hotel, was let to a number of tenants with each tenant occupying premises consisting of one or more rooms. An issue arose as to whether the building was exempted from inhabited house duty. That exemption was allowed under s 13(1) of the Customs and Inland Revenue Act 1878 (c 15) if a house was divided into, and let in, different tenements and any of such tenements was occupied solely for the purposes of any trade or business, or of any profession or calling.

8 Lord Sumner was of the view that the exemption did not apply because some of the rooms were occupied by a caretaker. In his view, this meant that the building was not wholly divided into, and let in, separate tenements which he considered to be the requirement for exemption.

9 Mr Mathew relied on what Lord Sumner said at 938 to 940:

> Inhabited house duty originated in 1778 (28 Geo.3, c.26), and from the first there has been special provision for the incidence of the duty, when a house is divided into different parts inhabited by different persons or families. From the first "tenement" was used in all the statutes as a term descriptive of a kind of such parts. It never seems to have had any precise meaning. It has never received any statutory definition. …
>
> … Further, a tenement must be something which is capable of occupation for a business purpose. It is clearly a physical division.

10 Thus, Mr Mathew stressed that there must be some physical separation, presumably by walls. However, those parts of Lord Sumner's judgment did not deal with spaces. I note that in another part of 940, Lord Sumner added:

> Mere letting does not divide, and mere separate letting does not in this sense make a tenement; but the section does not in terms indicate what the fashion of that physical division may be. Would an uncovered yard, a dark cellar, the cavity under the slope of a roof, a large verandah, a space on a floor undefined by any marks or bounds though capable of being ascertained and defined, fall within the term?

At 943, he said:

> To turn to the Scotch cases. In *Russell v. Coutts* [9R.261] Lord President Inglis, having said that "the meaning of the word 'tenement' in this statute is a part of a house so structurally divided and separated as to be capable of being a distinct property or a distinct subject to lease," proceeded to hold that the large room used as a stamp office was not within the subsection, …

Then at 944 he said:

> In the full width of Lord President Inglis's definition I do not see why a space on a floor, physically separated from the rest by a painted boundary line, or a safe in a safe deposit, might not be tenements. Each is divided from the rest so as to be capable of exclusive possession, of separate

letting, and of use for business purposes. The same might be said of a locked-up cupboard.

11 Accordingly, Lord Sumner was of the view that a space on a floor might be a tenement if it was physically demarcated by a painted line. The question which I asked myself was whether that painted line or the absence thereof indeed makes the difference in the context of the PTA.

12 On one argument, the entire area of the common property may be said to be constituting a tenement so as to be taxable even though it is not likely that the entire area will be let since there must be sufficient space for human traffic to move around the shopping centre. However, in the present case, the relevant authorities have not sought to treat the entire common property as one tenement but rather the Spaces as separate tenements. The Spaces may not have lines painted thereon, but, does that matter? For example, the automated teller machines ("ATMs") stand on the very area which is used. It seems to me artificial to say that if a line is drawn around each machine, it becomes a tenement but not if no line is drawn. The same point applies to the area where a weighing scale is placed and the areas used by retail kiosks and pushcarts, although in the last example the pushcarts may be moved a bit to the left or right from time to time if there is no line drawn on the common property to indicate the actual area within which they must remain. However, the pushcarts are not moved around the shopping centre throughout the day. I am of the view that the Spaces are tenements even if no lines are drawn on the common property to demarcate the Spaces.

13 I am aware that in *Farmer*, Lord Parker of Waddington, who was in the majority, said at 933:

> To bring the section into operation the house must be "divided into and let in different tenements." Obviously "divided into different tenements" is not the same as "let in different tenements." It must refer to some sort of structural division which would secure to the occupier of each divided part the exclusive use of that divided part, affording a physical barrier against intrusion by others. The floor of a Corn Exchange let in stands to corn merchants would not in this sense be divided into different tenements. The tenement must be so structurally divided and separated as to be capable of being a distinct property or a distinct subject of lease. This is the criterion laid down by the Lord President in *Russell v. Coutts* [9R.261], and approved by Lord Davey in *Grant v. Langston* [[1900] AC 383, at p 397].

However, it will be recalled that the legislation in *Farmer* required the house to be "divided into, and let in, different tenements". Lord Parker had considered the requirement of division thereunder to require a tenement to be structurally divided and separated. My view that the Spaces constitute "tenements" under the PTA is not inconsistent with his view in the context of the legislation in *Farmer*.

14 Accordingly, I agree with the Board's decision that the Spaces come within "tenements" under the PTA.

Lands

15 There is no definition of "lands" in the PTA. However, both Mr Mathew, and Ms Tham Siok Peng for the relevant authorities, agreed that the definition of "land" in the Land Titles Act (Cap 157, 1994 Rev Ed) ("LTA") was applicable to the PTA. That definition states:

> "land" means —
>
> (*a*) the surface of any defined parcel of the earth, all substances thereunder and so much of the column of airspace above the surface whether or not held apart from the surface as is

reasonably necessary for the proprietor's use and enjoyment, and includes any estate or interest therein and all vegetation growing thereon and structures affixed thereto; …

16 Mr Mathew accepted that the Spaces would have come under that definition of "land" but for s 2(6)(*c*) of the PTA which 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) …

(b) …

(c) no separate annual value shall be attributed to the land upon which the subdivided building stands.

17 The Board was of the view that s 2(6)(*c*) does not apply because it does not refer to "land" *simpliciter* but land "upon which the subdivided building stands". According to the Board, this means *terra firma* and not spaces in the air, so to speak. I agree. However, I am of the view that Mr Mathew's reliance on s 2(6)(*c*) meets with a more fundamental obstacle. In my view, s 2(6)(*c*) applies only in the context of assessing the annual value of a lot. Section 2(6)(*c*) has no bearing on the meaning of "lands" under s 6(1) of the PTA.

18 Accordingly, s 2(6)(*c*) of the PTA does not preclude the definition of "land" in the LTA from applying. However, on my part, I do not think that a definition in the LTA should be applied to the PTA which is a different piece of legislation.

19 Coming back to the PTA, *Butterworths' Annotated Statutes of Singapore* vol 9(1) (Butterworths Asia, 1998 Issue) states at p 390 that:

It is settled law that the word 'land' in the s 6(1) takes on its common law meaning and includes chattels which are annexed to the land so as to form part of the land …

20 Ms Tham relied on *Chief Assessor & Comptroller of Property Tax v Van Ommeren Terminal (S) Pte Ltd* [1993] 3 SLR 489 ("*VOT*") where Chao Hick Tin J (as he then was) decided that storage tanks placed on land were part of the land so that property tax was payable on those tanks. Chao J had noted that the tanks were placed to improve or promote the enjoyment of the land. Adopting this observation in the context of the case before me, Ms Tham submitted that the erection or placing of kiosks, ATMs and mobile carts add to the enjoyment of the land and the Spaces have become part of the land.

21 As the question before me is not whether the items placed in the Spaces add to the enjoyment of the land or whether the items have become part of the land but whether the Spaces constitute land, *VOT* is distinguishable. Furthermore, while the shopping centre may be considered to be part of the land, specific areas of the common property in the shopping centre are one step removed. If the Spaces come within the meaning of "lands", then do specific walls or partitions in the shopping centre also come within the meaning of "lands"? I do not think so. Accordingly, I am of the view that the Spaces do not come within the meaning of "lands" in s 6(1) of the PTA.

Buildings

22 Unlike "tenements" and "lands", there is a definition of "building" in s 2 of the PTA. The definition states:

> "building" means any structure erected on land and includes any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise, any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery.

23 Following the Board's decision in *Yat Yuen Hong Co Pte Ltd v Chief Assessor* (1959–1986) SPTC 135, the Board in the case before me accepted that the definition of "building" comprised three limbs:

> (a) structure erected on land;
>
> (b) any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise; or
>
> (c) any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery.

I note that in *VOT*, Chao J also accepted that the definition comprised these three limbs.

24 With respect, I am of the view that there are two, and not three, limbs and that category (b) above is part of category (a) above. In other words, "building" means:

> (a) any structure erected on land and includes any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise; or
>
> (b) any slip, dock, *etc.*

25 As regards the question whether the Spaces are actually part of a building rather than a building itself, the Board referred to s 10(3) of the PTA which states:

> 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.

I note that the substance of s 10(3) of the PTA was originally found in s 111(3) of the Local Government Ordinance 1957 (Ord No 24 of 1957). Neither side provided any explanatory statement or parliamentary report to shed light on what this provision means.

26 The Board was of the view that if the Spaces comprised part of a building rather than a building, then shop units within a shopping centre would never be taxed as each of them would be no more than part of a structure. I do not agree with that reasoning. It does not follow that just because shop units are taxable that they necessarily come within the meaning of "buildings". They may be taxable because they come within the meaning of "tenements": see *Cho Chih Yee v Chief Assessor* [1969] 2 MLJ iii where the Board considered flats to be tenements and *International Associated Co Pte Ltd v Chief Assessor, Singapore* [1980–1981] SLR 257 where it was conceded that a vacant office unit was a tenement.

27 In *Intercontinental Properties (Pte) Ltd v Chief Assessor, Singapore* [1980–1981] SLR 561 ("*Intercontinental Properties*") Chua J expressed the view that each flat in a building was deemed to be a "building" by virtue of s 9(3) of the Property Tax Act (Cap 144, 1970 Rev Ed), which is *in pari materia* with s 10(3) of the PTA. He also said that such flats come within the meaning of "tenements". He was of the view that s 9(3) applied when a building was divided physically in such a manner that each part was capable of separate and independent ownership. Each part would then be deemed a building. However, it will be recalled that the terms of s 10(3) are such that each part is a building only if each is owned by a different owner. That suggests that each part must in fact be owned by a different owner and not merely be capable of separate and independent ownership.

28 In any event, even if Chua J is correct, the Spaces before me are not flats or shop units. The owners of the Spaces are the same, *ie*, the subsidiary proprietors of the shopping centre. While previously it was possible under s 23(1) of the LTSA for the subsidiary proprietors to transfer common property, I do not see how the Spaces can be transferred to another owner, in the sense of transferring title, bearing in mind their locations inside the shopping centre.

29 A more fundamental obstacle to the application of s 10(3) is that the Spaces are not "divided" laterally or horizontally as is required under s 10(3). On the aspect regarding division, I use Lord Parker's judgment in *Farmer*, which I have cited above, as a guide.

30 Consequently, unlike the Board, I am of the view that the Spaces do not come within the meaning of "buildings" in the PTA.

Enforcement

31 Mr Mathew submitted that common property cannot be taxable because payment of the tax cannot be enforced under s 6(3) of the PTA. That provision states:

> (3) The tax shall be a first charge on the property concerned and, if not paid within the prescribed time, shall be recoverable in the manner provided in this Act.

32 Section 39(1)(*b*) of the PTA prescribes how the Comptroller is to sell premises to recover arrears of property tax.

33 As there is no subsidiary strata certificate of title for the common property, let alone for areas within the common property, I agree that the charge cannot be enforced by way of sale even if there can be a charge in the first place on common property or on specific areas therein.

34 However, as the Board stated, there are other avenues of enforcement:

> (a) Under s 38 of the PTA, the Comptroller may declare any person to be the agent of any other person for the purposes of the Act so that the agent is to pay any tax due from money held by him for the person whose agent he is declared to be.
>
> (b) Under s 38A of the PTA, any tax due may be sued for by way of a specially indorsed writ of summons.
>
> (c) Under s 39(1)(*a*) of the PTA, movable property of the person liable to pay the arrears may be seized by a warrant of attachment and then sold.

35 In my view, the non-application of ss 6(3) and 39(1) of the PTA is not determinative of the

issue whether the property concerned is taxable.

Estoppel

36 Another submission made by Mr Mathew was based on the combined notices issued by the Chief Assessor and Comptroller under ss 20(2) and 22(1) of the PTA. Each notice contained a number, *eg*, #B1-K1. The number appearing therein was not of a unit in the shopping centre but of one of the Spaces and, as I have mentioned, each number had been allocated by the Comptroller.

37 Mr Mathew relied on a sentence in each notice the terms of which are similar. I need set out only two of such sentences to illustrate:

> For 176 Orchard Road #B1-K1
>
> The annual value of your property is proposed at $1,200 with effect from 01/01/99. You would, however, have to pay tax from 01/07/1995 due to the completion of the building.
>
> For 176 Orchard Road #01-K9
>
> The annual value of your property is proposed at $18,000 with effect from 15/07/99 due to the completion of the building.

38 The main point of Mr Mathew's argument was the reference in the respective sentences to the completion of the building. He submitted that this meant that the basis for taxing the Spaces was that they constituted "buildings". Hence, the relevant authorities were estopped from relying on "tenements" or "lands" to claim the tax.

39 The Board was of the view that no estoppel could be raised to hinder the exercise of the law, relying on *Re Objection No 1186 of 1962* [1962] MLJ cxxxviii which in turn relied on the Privy Council case of *Maritime Electric Company, Limited v General Dairies, Limited* [1937] AC 610.

40 I am of the view that Mr Mathew had misconstrued the notices. Although the sentences may give the impression that "the building" is synonymous with "your property" and could have been better worded, the reference to the completion of the building was not to state the basis for claiming tax but the date from which the tax was payable.

41 Mr Mathew, however, also submitted that it was unclear whether the tax was being claimed in respect of the Spaces or the items in the Spaces. As an illustration, he referred to a Notice of Appeal to the Board in respect of #B1-K1 where one of the grounds of appeal was that the subject property is a weighing scale/machine. In my view, the reliance on that Notice of Appeal was misplaced. That Notice of Appeal was completed by the managing agent of the shopping centre and not by the relevant authorities. The notices from the relevant authorities do not refer to the items but to the numbers which were allocated to the Spaces only. Also, the hearing before the Board proceeded on the basis that the Spaces were the subject of the tax.

42 In the circumstances, I am of the view that no estoppel arises against the relevant authorities. I add that it was not disputed that, if necessary, the relevant authorities can issue new notices to claim the taxes.

Annual value

43 As I have mentioned, there must be an annual value attributable to the property which is to

be taxable. In the PTA, "annual value" is defined in s 2(1) as

> "annual value" —
>
> (*a*) in relation to a house or building or land or tenement, not being a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax); …

44 Mr Mathew submitted that common property can never be the subject of a letting as it belongs to all the subsidiary proprietors. The Board was of the view that "if a subject property was not capable of being leased at all for any reason, it *prima facie* had no annual value". However, the Board concluded that common property can be let.

45 Previously, under s 23(1) of the LTSA, the subsidiary proprietors could dispose of or transfer common property by a unanimous resolution at a general meeting. Mr Mathew submitted that a letting comes within the meaning of a disposition. I am of the view that even if this was so, common property could, generally speaking, still be let with a unanimous resolution. It is irrelevant whether such a unanimous resolution was in fact passed and whether the Spaces were in fact the subject of a lease or tenancy. I add that the fact that there is new legislation, *ie*, the Building Maintenance and Strata Management Act 2004 (Act No 47 of 2004), which came into operation on 1 April 2005, to make it easier to let out common property does not mean that previously it was impossible to do so, but quite the contrary.

46 However, if the Board was correct that the property must be capable of being leased out in order to have an annual value, then the question is whether the Spaces themselves, and not just common property generally, can be the subject of a letting. The essential characteristic of a lease is the grant of exclusive possession. Also, exclusive possession must be distinguished from exclusive occupation, see *Megarry & Wade: The Law of Real Property* (Sweet & Maxwell, 6th Ed, 1999) at paras 14-010 to 14-014. The right to exclusive possession is the right to exclude all other persons. How would the licensees of the Spaces exclude others? For example, the ATMs stand on the very areas which are the subject of the relevant agreement. They are accessible at all times to the public. The same applies to the weighing scale. The temporary kiosks have no wall or door. Likewise for the pushcarts. The Spaces are used differently from the examples which Ms Tham cited of parts of common property being used as a supermarket, kindergarten or canteen.

47 In response to my query whether each Space must be capable of being the subject of a lease in order to have an annual value, Ms Tham submitted that the concept of annual value was based on the principle of a hypothetical tenancy which means a tenancy has to be assumed even where there is no tenancy and there cannot be one. While the first limb of her proposition was not in dispute, I was initially doubtful about the second limb. The definition of "annual value" uses words like "let" and "landlord" which suggest that the property must be capable of being the subject of a letting, *ie*, a lease.

48 In *The London County Council v The Churchwardens and Overseers of the Poor of the Parish of Erith in the County of Kent, and the Assessment Committee of the Dartford Union* [1893] AC 562 ("*Erith*"), a question arose as to whether an owner himself must be regarded as a possible tenant in determining the rateability of a hereditament. The House of Lords answered this question in the positive. Lord Herschell LC said at 587–588:

> The rule which is to govern the assessment of premises to the poor-rate was laid down by the

Legislature in [the Parochial Assessments Act 1836] c. 96 s. 1, which provided that: "No rate for the relief of the poor should be allowed or be of any force which should not be made upon an estimate of the net annual value of the hereditaments rated thereunto, that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent."

In the Act to provide for uniformity in the assessment of rateable property in the metropolis ([the Valuation (Metropolis) Act 1869] c. 67 s. 4) the term "gross value" is defined as "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament if the tenant undertook to pay all usual tenant's rates and taxes and tithe commutation rent-charge, if any, and if the landlord undertook to bear the cost of the repairs and insurance, and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent." The term "rateable value" is defined as meaning "the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid."

So far as the question to be determined in this case is concerned I do not think the terms of the later Act are important. "The annual rent which a tenant might reasonably be expected, taking one year with another, to pay for a hereditament" is the same thing as "the rent at which the same might reasonably be expected to let from year to year."

It has never been doubted that the rent which is actually being paid by the occupier does not necessarily indicate what is the rent which a tenant might reasonably be expected to pay, or that an owner who is in occupation, and who may not be willing to let on any terms, is none the less rateable. The tenant described by the statute has always been spoken of by the Court as "the hypothetical tenant." Whether the premises are in the occupation of the owner or not, the question to be answered is: Supposing they were vacant and to let, what rent might reasonably be expected to be obtained for them?

49 Lord Herschell LC then referred to various decisions, including the Court of Appeal decision in *The Owens College v The Overseers of Chorlton-upon-Medlock* (1887) 18 QBD 403, and he said at 595:

My Lords, I have stated fully the reasons which led the learned judges to the conclusion that the governors of Owens College were to be left out of account as possible tenants when determining the annual value of the premises occupied by them, and I have most carefully considered these reasons with all the respect which is justly due to the views of the learned judges who concurred in them; but I am unable to share the opinion which they expressed. The conclusion arrived at is in its result sufficiently startling. Two public bodies might have erected buildings similar in all respects upon lands similar in situation and of equal value; and these buildings might be occupied in the same way and applied to the same purposes; and yet, if one of these bodies had power, under the statute constituting it, to hire such buildings, and the other had no such power, the rateable value of the buildings might, and almost certainly would, be different; that is to say, the buildings would have a different annual value, for the words in the Statute of William IV., which followed the expression "annual value," *only provide a means of arriving at what is the annual value of the premises*. Why should the annual or the rateable value of the premises for the purposes of the poor law depend upon the statutory power of the owner to take them, supposing he had not been the owner? I am unable to discover any satisfactory reason for this difference, and none seems to me to be suggested by the judgments in the *Owens College Case*. [emphasis

added]

50 In *Assessment Committee of the Metropolitan Borough of Poplar v Roberts* [1922] 2 AC 93 ("*Poplar*"), the question was whether the Increase of Rent and Mortgage Interest (Restriction) Act 1920 (c 17) affected the rateable value of the hereditaments for the purpose of the Valuation (Metropolis) Act 1869 (c 67) s 4. The majority of the House of Lords answered this question in the negative. Lord Buckmaster said at 103 to 104:

> So far as the occupier is concerned, the provisions of the Rent Restriction Act have not in any way made his occupation less beneficial. It is the landlord who is affected, and he, as landlord, is not the subject of assessment, nor can his interest in the property be considered for the purpose of determining what that assessment should be. If, however, the rent which has to be ascertained under the section is the real rent, then the fact that that cannot be increased will have a material effect upon the valuation. … Just as the tenant is hypothetical, so also is the rent; it is only used as a standard which must be examined without regard to the actual limitation of the rent paid by virtue of covenant as between landlord and tenant, and also, as I regard it, to statutory restrictions that may be imposed upon its receipt. From the earliest time it is the inhabitant who has to be taxed. It is in respect of his occupation that the rate is levied, and the standard in the Act is nothing but a means of finding out what the value of that occupation is for the purposes of assessment. In my opinion, the rent that the tenant might reasonably be expected to pay is the rent which, apart from all conditions affecting or limiting its receipt in the hands of the landlord, would be regarded as a reasonable rent for the tenant who occupied under the conditions which the statute of 1869 imposes.

51 Lord Atkinson said at 107:

> What the ratepayer is, under both the Act of 1836 and that of 1869, rated in respect of is decided by many cases in this House to be the beneficial occupation of a hereditament. And if he is in enjoyment of this species of occupation, he must be rated, even though he should not be a tenant of the hereditament, and though no person can be made the tenant of it, and though no rent is or could be received in respect of it. The statutory measure of the rateable value of this occupation is the annual rent which a tenant might be reasonably expected to pay one year with another for the hereditament occupied if the tenant undertook to pay all the usual tenant's rates and taxes and tithe commutation rentcharge, if any, and if the landlord undertook the other expenses, if any, necessary to maintain the hereditament in a state to command the rent, after deducting therefrom the probable average cost of the repairs, insurance and other expenses, as aforesaid. That is the measure, and the only measure of the rateable value which is provided. It is to be applied to the hereditament, no doubt, rebus sic stantibus, but this rent is merely a notional or speculative thing. The tenant who is expected to be ready and willing to pay it, in many cases, if not all, has not, and cannot have, any real existence, and the payment of any rent for the hereditament by any person may, in fact, as I shall presently show, be absolutely prohibited by law, statutory or other.

and at 109–110:

> It is unnecessary to refer at length to all the well-known cases which have established that a private person or a public body in occupation of his or its own property can be treated under the old system of rating as a possible hypothetical tenant, and be rated in respect of the beneficial occupation of his or its property whether he or it has or has not power to let it or to receive rent for it.

He then cited Lord Herschell LC's judgment in *Erith*, which I have set out above, with approval.

52 Under the PTA, the owner is liable for the tax, unlike the case under the old English rating legislation where the occupier is liable. Nevertheless the PTA is derived from the Local Government Ordinance 1957 which in turn appears to have been modelled on the old English rating legislation. *Erith* and *Poplar* suggest that the rate was payable even if the tenement could not be let out. True, that proposition was stated in the context of the absence of a power to let as opposed to a space or area being incapable of being the subject of a letting, but the difference in the facts does not seem to justify a difference in conclusion. Furthermore, Lord Herschell LC had observed that the words which follow the expression "annual value", in the Parochial Assessments Act 1836 (c 96) ("the 1836 Act") s 1, only provide a means of arriving at what the annual value is. The words which follow the expression "annual value" in s 1 of the 1836 Act are in substance similar to the words which follow "annual value" in the PTA for present purposes. Accordingly, it appears that so long as the property in question comes within the meaning of "tenement", then it is subject to tax under the PTA and there is no second qualification, as it were, to be met. Hence, if the property cannot in fact be let in the sense that exclusive possession cannot be given, it is nevertheless subject to tax.

53 What then is the annual value of each of the Spaces? In my view, the use of the word "let" and "landlord" in the definition of "annual value" does not mean that the "gross amount" mentioned in the same definition is referable to rent only but can and does include the fee which is reasonably expected to be received if the Spaces are licensed from year to year, with the licensor paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax).

54 I find support in this view from s 2(4) of the PTA which states:

> In estimating the annual value of any house, building, land or tenement, the annual value of the house, building, land or tenement shall, at the option of the Chief Assessor, mean the annual equivalent of the gross rent at which the same is let *or licensed* to the occupier or occupiers, as the case may be, and in arriving at that annual equivalent the Chief Assessor may also give consideration to any capital or periodical sums or any other consideration whatsoever, if any, which, it appears to the Chief Assessor, may have also been paid. [emphasis added]

55 As can be seen, the gross rent mentioned in s 2(4) is referable not only to a letting but also to a licence. This demonstrates that "gross rent" also includes a licence fee. By parity of reasoning, "let" and "landlord" in the definition of "annual value" in s 2(1) are also not confined to a lease but includes a licence and a licensor.

56 The substance of s 2(4) was first introduced after a Select Committee was appointed in respect of the Local Government Bill 1956. The report of the Select Committee shows that it was introduced as a fourth proviso to the definition of "annual value" then. The fourth proviso as introduced at the Select Committee stage stated (*Report of the Select Committee on the Local Government Bill 1956* (Second Session of the First Legislative Assembly, Part II) (16 May 1957) vol 3, col 113):

> Provided also that in estimating the annual value of any house, building, land or tenement the annual value of such house, building, land or tenement shall, at the option of the local authority, mean the annual equivalent of the gross rent at which the same is let *or licensed* to the occupier or occupiers, as the case may be and in arriving at such annual equivalent the local authority may also give consideration to any capital or periodical sums, or any other consideration whatsoever, if any, which it appears to the local authority may have also been paid;". [emphasis

added]

57 The Minister for Local Government, Lands and Housing, Inche Abdul Hamid bin Haji Jumat, said on 16 May 1957 ([56] *supra*, at col 114):

> The reason for the new fourth proviso is that this is a new proviso and is designed to assess the person who is enjoying the full rental value paid by the occupier or occupiers of rateable premises. It also gives sanction to the present practice of assessing let out premises on the basis of actual rents received.

58 As can be seen, the Minister's speech on the fourth proviso refers to "rental", "let out" and "rents" only, even though the terms of the fourth proviso also referred to "licensed". It seems to me that the Minister was using "rental", "let out" and "rents" generically to refer to both leases and licences. There was no suggestion that while this was so for the fourth proviso, the reference to "let" and "landlord" in the then definition of "annual value", which is in substance similar to the present definition for present purposes, was confined to leases only and excluded licences. I would expect that if such a distinction was to be drawn, it would not been done so subtly without any mention by the Minister.

59 Accordingly, I am of the view that there is an annual value for each of the Spaces.

Double taxation

60 Although the quantum of the annual value was in issue before the Board, it was not in issue before me. However, the MCST raised an argument about double taxation. Mr Mathew submitted that there was double taxation because in assessing the annual value of the units (which are the subject of subsidiary strata certificates of title), account would already be taken of the common property. If tax is imposed on certain areas of the common property there would be double taxation.

61 However, there was no evidence that the Spaces were taken into account when the annual value of the units in the shopping centre were being assessed. If common facilities like lifts and escalators were taken into account, that is another matter. Accordingly, I do not find any double taxation. I add that if there is in fact any double taxation, the Chief Assessor will have to do the right thing and make the necessary adjustments to the various annual values.

Owner

62 Under s 6(2) of the PTA, the tax is payable by the owner of the property. The MCST had taken a point before the Board that there was no owner and hence no property tax could be imposed. Although this issue was not raised before me, I will venture my view on it.

63 An "owner" is defined in the PTA as "the person for the time being receiving the rent of any premises whether on his own account or as agent or trustee for any other person or as receiver or who would receive the same if the premises were let to a tenant and includes the person whose name is entered in the Valuation List".

64 The Board was of the view that the MCST came within the definition of "owner" in the PTA. I agree since the MCST is receiving the licence fees although the subsidiary proprietors are the factual owners of the common property.

Conclusion

65 In the circumstances, I dismiss the MCST's motion with costs to be paid by the MCST to the Chief Assessor and the Comptroller, such costs to be agreed or taxed.