Management Corporation Strata Title Plan Nos 1298 and 1304 v Chief Assessor and Comptroller of Property Tax
[2006] SGCA 29

Case Number : CA 146/2005

Decision Date : 01 September 2006

Tribunal/Court : Court of Appeal

Coram : Andrew Ang J; Andrew Phang Boon Leong JA; Tan Lee Meng J

Counsel Name(s) : Ong Sim Ho, Yang Shi Yong and Sophine Chin (Ong Sim Ho) 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 – Owner – Common property of shopping centre licensed by management corporation of shopping centre for use by various parties for fee – Whether management corporation "owner" of common property and liable to pay property tax thereon – Sections 2(1), 2(7)(a), 6(2) Property Tax Act (Cap 254, 2005 Rev Ed)

Revenue Law – Property tax – Valuation list – Common property of shopping centre licensed by management corporation of shopping centre for use by various parties for fee – Chief Assessor including common property in Valuation List for assessment of property tax payable thereon – Whether common property in shopping complex under land title strata scheme exigible to property tax when such common property let or licensed for use for rent or fee – Sections 2(7), 6(1) Property Tax Act (Cap 254, 2005 Rev Ed)

1 September 2006

Andrew Ang J (delivering the grounds of decision of the court):

Background

1 This is an appeal by the Management Corporation Strata Title Plan Nos 1298 and 1304 ("the MCST" or "the appellant") against the decision of Woo Bih Li J, upholding the inclusion, in the Valuation List and the assessment of property tax, of seven areas in the common property ("the Spaces") of Centrepoint Shopping Centre ("the shopping complex"). As the MCST had licensed various parties to use the Spaces, the Chief Assessor had included the Spaces in the Valuation List and the Comptroller of Property Tax ("the Comptroller") had issued notices of assessment in respect of each of them. Details of the numbers and usage are as stated in the judgment below ([2006] 1 SLR 465) at [1] and are as follows:

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 the Comptroller but the appeal was dismissed. Its further appeal to the High Court was, likewise, dismissed. Hence this appeal. We note that this is the first time this court has to decide on the exigibility to property tax of common property in a shopping complex under a land title strata scheme.

Issues

3 The primary issue before us is whether the Spaces are assessable to tax under s 6(1) of the Property Tax Act (Cap 254, 2005 Rev Ed) ("the PTA") which reads:

> **Charge of property tax**
>
> **6.**—(1) 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 and amended from time to time in accordance with the provisions of this Act.

Interpretation of section 2(7) of the PTA

4 In order that the Chief Assessor may include the Spaces in the Valuation List, they must fall within the meaning of "houses, buildings, lands [or] tenements" in s 10(1) of the PTA. Despite the appellant's contention otherwise in the High Court, it is now common ground that the Spaces are tenements. Nevertheless, the appellant maintains that the Spaces ought not to be subject to property tax. The crux of the appellant's contention is that "a subsidiary proprietor's undivided

interest and share in the common property is inalienably attached to his lot and is subject to tax with his lot as a composite whole" so that "when all the lots are subject to tax, the common property in the strata development would concomitantly have been taxed". Consideration of this contention necessitates an examination of s 2(7) of the PTA (previously s 2(6) of the Property Tax Act (Cap 254 1997 Rev Ed)) which reads:

> 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.

5 Counsel for the appellant argued that on a true construction, the subject matter of s 2(7), *ie*, "property which comprises a lot the title of which is issued under the Land Titles (Strata) Act" is not simply a "lot". In so arguing, presumably he read the word "comprises" as meaning "includes" rather than "consists of". Thus, on his argument, the property whose annual value is to be assessed is property which "includes" not only the lot, but also the relevant share of the common property owned by the subsidiary proprietor of the lot. However, a reference to the definition of "common property" readily disposes of this argument.

6 "Common property" as defined in s 3(1) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA") means:

> (*a*) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —
>
> (i) *not comprised in any lot* or proposed lot in that strata title plan; …
>
> [emphasis added]

The similarity in the language of s 2(7) of the PTA and this definition rules out the construction advanced by counsel for the appellant. In the same way that the definition of "common property" excludes property comprised in any lot, "property which comprises a lot" in s 2(7) of the PTA excludes common property; they are mutually exclusive.

7 Counsel for the appellant further argued that the subsidiary proprietor's share of the common property being inalienably tied with the lot, it could not have been Parliament's intention to exclude common property from a charge to property tax when it enacted s 2(7) of the PTA. Our interpretation of s 2(7), however, does not bear that out. If it was indeed Parliament's intention that the subsidiary proprietor's share of the common property should be taken into account in the assessment of the annual value of the lot, it would have been easier to say so explicitly. Instead, s 2(7)(*c*) of the PTA specifically provides that "no separate annual value shall be attributed to the land upon which the subdivided building stands". It would have been remiss of the legislative draftsman to have sought to effect such inclusion merely by the use of the word "comprise" without identifying what was to be included.

8 Assuming *arguendo* that the words "property which comprises a lot" includes the relevant share of the common property, why would the assessment of the annual value thereof then specifically exclude, as prescribed in s 2(7)(*c*), the annual value attributable to the land upon which the subdivided building stands? That would be adding with one hand only to take away with the other.

9 In truth, s 2(7) was introduced to address the uncertainties that arose with the introduction of strata subdivision. For the first time in Singapore, "properties in the air" (*ie*, strata lots) were capable of being separately owned instead of being part of the land on which the building stood as was the case under the common law encapsulated in the maxim "*quicquid plantatur solo, solo cedit*" (whatever is affixed to the soil belongs to the soil). For purposes of property tax, s 2(7) recognised the subsidiary proprietor of a strata lot as the owner and stated in effect that the annual value of a strata lot was to be assessed no differently than if it were a freehold estate in land. And since, under s 13 of the LTSA, the land was owned in common by the subsidiary proprietors of the strata lots, no separate valuation of the land was required. Indeed, so long as the common property was used or capable of being used in common by occupiers of the strata lots, no additional assessment had been raised by the Comptroller of Property Tax. The question arose in the present case because each of the Spaces was licensed for a fee instead of being held for common use.

10 Whilst we do not accept the appellant's construction that the property which is the subject of s 2(7) includes the subsidiary proprietor's interest in the common property, we would accept that, in practice, the determination of the annual value of a lot would almost inevitably take account of the enjoyment to be derived from facilities and amenities forming part of the common property even though no specific value would be separately ascribed to such facilities and amenities. After all, it is unrealistic to suggest that (following the definition of "annual value" in s 2(1) of the PTA) "the gross amount at which [a lot] can reasonably be expected to be let from year to year" will not have implied therein some value for the enjoyment to be derived from at least some parts of the common property. That may explain why s 2(7)(*c*) provides that in assessing the annual value of a lot "no *separate* annual value shall be attributed to the land" [emphasis added]. In other words, whilst the assessment of the annual value of a lot may indirectly take into account the facilities and amenities afforded by the common property, no separate value is to be ascribed to the land in such assessment. However, it does not follow that property tax may not be charged where, instead of being held for enjoyment in common by all occupants of strata lots, parts of the common property are let or licensed for a rent or fee. Nothing in the PTA precludes the assessment of property tax in such circumstances. Given that it is no longer in contention that the Spaces are "tenements", in the absence of any exemption, their inclusion in the Valuation List is unobjectionable. Accordingly, the Spaces are properly subject to property tax under s 6(1) of the PTA.

Double taxation

11 The appellant argued that this would be tantamount to double taxation. It reasoned that any use to which the Spaces are put will enhance the annual value of all the strata lots thereby giving rise to an increase in the property tax chargeable. Therefore to assess the Spaces to property tax as well would amount to the imposition of double taxation. The fallacy of this argument is that it assumes that the letting out of the Spaces would automatically give rise to an enhancement in the annual value of the lots *pro tanto*. Why must that be so? It may even be that the Spaces are put to uses which compete against the businesses conducted within certain strata lots. In such event, the rental which a tenant would be prepared to pay for a lot may well be reduced.

12 Rather than to assume that the enhancement in the annual value of the common property by the licensing of the Spaces would be reflected in increases in annual value of the strata lots, the

more accurate way is simply to assess the Spaces to property tax as clearly sanctioned by the PTA and to assess each strata lot to property tax as before, account being taken of the change in the annual value thereof (if any).

Who the owner liable for property tax is

13 Counsel for the appellant submitted that the appellant is not the owner of the Spaces forming part of the common property and therefore ought not to be liable for the payment of property tax in respect thereof. Although s 2(1) of the PTA defines "owner" to mean "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", the appellant submitted that s 2(7)(*a*) of the PTA ought to prevail. The latter provision 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[.]

As we earlier noted, s 2(7) was enacted to address the uncertainties that arose with the introduction of strata subdivision which created "properties in the air". Section 2(7)(*a*) made it clear that a strata lot was owned by the subsidiary proprietor thereof and not by the owners of the land upon which the building (of which the strata lot formed part) stood. Its purpose was not to determine upon whom the liability for payment of property tax was to fall. That is covered by s 6(2) read with the general definition of "owner" in s 2(1). We agree with the learned judge that it does not matter that the Spaces are licensed and not let because s 2(4) of the PTA draws no distinction between a letting or a licence. It may be inferred, therefore, that the definition of "owner" in s 2(1) includes a person for the time being receiving the licence fees in respect of any premises.

14 There is no sensible reason for the interpretation urged upon us by counsel for the appellant, *ie*, that s 2(7)(*a*) intended that property tax in respect of a strata lot should be paid by the subsidiary proprietor thereof. If the rent or licence fee is collected by someone else, why should not the property tax be paid by such recipient? Moreover, in any event, s 2(7)(*a*) specifically refers to the strata lot alone and cannot have any application to the common property. The appellant is therefore the proper party to whom the Comptroller may look for the payment of property tax.

Decision

15 For the foregoing reasons, the appeal is dismissed with costs, with the usual consequential orders to follow.