Teng Fuh Holdings Pte Ltd v Collector of Land Revenue
[2006] SGHC 93

Case Number : OS 1379/2005

Decision Date : 16 June 2006

Tribunal/Court : High Court

Coram : Andrew Phang Boon Leong J

Counsel Name(s) : Zaheer Merchant and Sophine Chin (Madhavan Partnership) for the plaintiff; Eric Chin Sze Choong and Ho Su Ching (Attorney-General's Chambers) for the defendant

Parties : Teng Fuh Holdings Pte Ltd — Collector of Land Revenue

Administrative Law – Judicial review – Ambit – Plaintiff's land compulsorily acquired for "public purpose" under s 5(1) Land Acquisition Act – Plaintiff challenging bona fides of acquisition – Whether conclusive evidence provision in s 5(3) of Land Acquisition Act precluding court from questioning decision of government authority – Sections 5(1), 5(3) Land Acquisition Act (Cap 152, 1985 Rev Ed)

Civil Procedure – Delay – Plaintiff's land compulsorily acquired – Plaintiff compensated for acquisition of land and continuing to occupy land as licensee after acquisition – Plaintiff seeking leave to apply for certiorari and mandamus 22 years after acquisition of land – Whether plaintiff's application made out of time – Whether satisfactory reason for plaintiff's delay in making application existing – Order 53 r 1(6) Rules of Court (Cap 322, R 5, 2004 Rev Ed)

Land – Compulsory acquisitions – Plaintiff's land compulsorily acquired for "public purpose" under s 5(1) Land Acquisition Act – Subsequent change in purpose of land – Plaintiff alleging acquisition made in bad faith – Plaintiff seeking leave to apply for certiorari and mandamus 22 years after acquisition of land – Whether plaintiff proving prima facie case of reasonable suspicion that bad faith existing – Section 5(1) Land Acquisition Act (Cap 152, 1985 Rev Ed)

16 June 2006

Andrew Phang Boon Leong J:

Introduction and background

1 The present proceedings concerned an application for leave to be granted to the plaintiff to apply for an order of *certiorari* as well as for an order of *mandamus*. I held that leave could not be granted because the plaintiff had not made its application within three months after the date of the proceeding as set out in O 53 r 1(6) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed), and that no satisfactory reason had been tendered by the plaintiff for such a delay. On this ground alone, the application had to be dismissed. Nevertheless, I further held that, in any event, the plaintiff had not satisfied the very low threshold for leave to be granted as established in the case law. It was clear that the power of acquisition was exercised by the defendant in good faith and in accordance with the relevant requirements stipulated in s 5 of the Land Acquisition Act (Cap 152, 1985 Rev Ed) ("the Act"). The plaintiff has appealed against my decision. I now set out the detailed grounds for my decision.

2 As is customary, a brief rendition of the factual backdrop is not only appropriate but also important.

3 The plaintiff was, until 26 February 1983, the owner of the land and property thereon situated at Mukim 25 Lots 498, 348 and 350 at 20–22 Geylang Road ("the land"). The land was gazetted for acquisition under s 5 of the Act and the declaration to this effect was published in the

Government Gazette of 26 February 1983 (GN No 638/1983). In the declaration itself, it was stated that the land was "needed for a public purpose, viz.: General Redevelopment". This was some 22 years ago. Compensation was in fact awarded to the plaintiff based on the market value of the land as at 30 November 1973.

4 The main bone of contention, in so far as the plaintiff is concerned, is that the land has, as the plaintiff in its statement to the originating summons filed says, "been left in substantially its original physical condition and has been licensed by the Respondent to the Applicants for the Applicants' occupation and use vide a license [*sic*] agreement in writing and renewed periodically"; indeed, "[t]he licence has continued to date since the compulsory acquisition of the land". What is of interest in this regard is that the plaintiff actually continued in occupation of the land as a licensee throughout the 22-year period. It also had the use of the compensation referred to in the preceding paragraph during this entire period. As we shall see, it is prepared to return these moneys in return for the land. What it did not highlight in its application was the fact that the present market value of the land is far in excess of the original compensation it had received. It was only after a query by the court that it was revealed by the plaintiff that, even based on a rough desktop calculation, the present market value of the land was extremely high indeed. This is not surprising, given both the intense scarcity of land in Singapore (which is, incidentally, why the Act was promulgated in the first instance), coupled with the remarkable economic growth that has taken place in Singapore during the interim period which has contributed to soaring land values.

5 I should add that the plaintiff was no babe in the woods. It is an established company with considerable experience in property transactions. All these facts – and more, as we shall see – are of great relevance in so far as the present proceedings are concerned, especially since the plaintiff has alleged, time and again, *ultra vires* conduct as well as bad faith on the part of the defendant throughout the present proceedings and has sought to portray itself as an individual who has been treated most unfairly and unjustly. Indeed, these last-mentioned allegations are serious ones and must be addressed by the court whose task is, indeed, to ensure that justice and fairness is in fact achieved – in particular, to ensure that there is no abuse of power by the relevant government authorities (here, the Collector of Land Revenue, Singapore). Any abuse of governmental power cannot – indeed, must not – be tolerated; it must be ferreted out and eradicated forthwith if the very idea as well as ideal of the rule of law is not to be undermined. Quite apart from the fact that any such abuse is inherently repugnant to the very concept as well as (more importantly) practice of justice and morality itself, any such undermining would have serious and inimical implications on much broader national as well as international levels. Indeed, as we shall see, the plaintiff's task in the present proceedings was especially straightforward. This was an application for leave to apply for the orders concerned and, as I shall point out below, entailed a relatively low standard of proof on the part of the plaintiff.

6 Returning to the particulars in the present application, some 22 years after the original acquisition of the land, the plaintiff filed, on 30 September 2005, an *ex parte* originating summons for the following orders.

7 The first order sought, contained in prayer 1, was that:

> The Applicants be granted leave of Court to apply for an Order of Certiorari to quash the Declaration in the Gazette whereby the Applicants' land in the Gazette was compulsorily acquired for the "public purpose viz. General Redevelopment".

8 The second order sought, contained in prayer 2, was that:

The Applicants be granted leave to apply for an Order of Mandamus directing the Respondent does [*sic*] convey, transfer and/or otherwise do all things necessary to return the land to the Applicants in consideration of the refund and/or repayment or payment by the Applicants to the Respondent of the monies received as compensation for the said acquisition and/or for a declaration that the acquisition be declared void and/or invalid and/or illegal and/or of no effect and/or as if the said acquisition had not taken place in consideration of the aforesaid (as applicable).

9 The third order sought, contained in prayer 3, was for:

[S]uch further or other orders and directions pursuant to the Order(s) aforesaid, including but not limited to such consequential orders for the rectification of the Registry of Deeds to reflect the conveyance and transfer of the land to the Applicants, consideration to be furnished and gazetting of the land to give effect to the aforesaid relief sought as necessary, be granted or made as the Honourable Court deems fit and/or just.

10 As I have already mentioned, this application was one for *leave* to apply for the orders referred to above. The standard of proof, as I have also alluded to above, was not one that would be required if this were the actual substantive hearing itself. The legal principles applicable in proceedings such as the present are well established. However, I need to consider, first, a no less important threshold issue – was the application for leave in the present proceedings out of time in the first instance?

Was the application out of time?

11 As alluded to at the outset of this judgment, the operative provision is O 53 r 1(6) of the Rules of Court. Order 53 r 1 is reproduced in full to place the aforesaid provision in context, as follows:

No application for order of mandamus, etc., without leave (O. 53, r. 1)

1.—(1) No application for an order of mandamus, prohibition or *certiorari* shall be made unless leave to make such an application has been granted in accordance with this Rule.

(2) An application for such leave must be made by ex parte originating summons and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by an affidavit, to be filed when the application is made, verifying the facts relied on.

(3) The applicant must serve the ex parte originating summons, the statement and the supporting affidavit not later than the preceding day on the Attorney-General's Chambers.

(4) The Judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit.

(5) The grant of leave under this Rule to apply for an order of prohibition or an order of *certiorari* shall, if the Judge so directs, operate as a stay of the proceedings in question until the determination of the application or until the Judge otherwise orders.

(6) Notwithstanding the foregoing, leave shall not be granted to apply for an order of certiorari*to remove any judgment, order, conviction or other proceeding for the purpose of its*

being quashed, unless the application for leave is made within 3 months after the date of the proceeding or such other period (if any) as may be prescribed by any written law or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Judge to whom the application for leave is made; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

[emphasis added]

12 Counsel for the plaintiff, Mr Zaheer Merchant, tendered a rather ingenious argument. I set out, at some length below, the relevant portion of the notes of evidence where this argument is embodied – both for accuracy as well as context:

Ct (Court): Move on to issue of delay?

PC (Plaintiff's/ Applicant's Counsel): *The 3 month period runs from the time that we received notice from the Ministry of Law. Also, they have made reference to the licence agreement.* Pg 35 of affidavit of Mr Lim Teng Neng – licence is a personal privilege. *We have no interest as licensees and therefore there is no obligation or duty of the applicants to investigate the plans the authorities have for the land. It was only in September last year, upon realisation of these facts (that the change had taken place and that the land was now residential), that solicitors were instructed to write to the Ministry of Law to seek redress.* Refer to second submission, paras 20 and 21.

Ct: *When did the change take place?*

RC (Defendant's/ Respondent's Counsel): *When the Kallang development guide plan was issued in 1993.*

Ct: *When ought the applicants to have written in to the Ministry of Law?*

PC: *When they were advised by the law firm.*

Ct: *When ought the applicants to reasonably have sought advice from the law firm?*

PC: *Is it reasonable for the applicants to have gone and investigated as bare licensees? Ultimately, they relied on the licence and the terms of the licence.*

The 22 years that have passed has fortified their aggrievement.

RC: *The applicants had all the facts as of 1993.*

They are not ordinary men on the street; they are developers.

Ct: Assuming I am not with the applicant on the 3 month time-bar, is there any reason why time should be extended in favour of the applicant?

PC: Because of the draconian nature in the acquisition and given that the acquisition was irregular.

RC: There clearly are no grounds for time to be extended. There are clear evidential

difficulties. Acquisition is draconian by its very nature. The question is not whether the decision is right or wrong, but whether time ought to be extended as the applicant is out of time.

The applicant also received public funds put in good faith in their hands to the tune of $4.2 million.

There are now three different zones on the land concerned – it is detrimental to good administration to reverse everything when the government has gone to so much trouble over the years to develop a seamless plan for the land concerned.

[emphasis added]

13 As a general point (to which I shall return later in this judgment), counsel for the plaintiff relied, in a not insignificant manner throughout the hearing, on the fact that the plaintiff had suffered a terrible injustice because nothing had ostensibly been done with the property for 22 years. As I have already mentioned above, and as counsel for the defendant, Mr Eric Chin, also indicated in the notes of evidence set out above, the plaintiff is no babe in the woods. It is a commercial entity which in fact ensured that it obtained the maximum compensation it could for the acquisition of slightly in excess of $4m – a significant sum now and an even more significant sum then, the use of which the plaintiff has had for the exact same period the plaintiff claims it had suffered so (*viz*, 22 years). Leaving aside irrelevant emotive factors, the question that faces this court squarely in so far as the first issue of *timing* is concerned is this: *when ought the plaintiff to have applied for leave, noting (once again) that they only did so 22 years after the property had been acquired?* Looked at in this light, the period of 22 years is a double-edged sword and therefore not as useful to the plaintiff as it would have us think.

14 The plaintiff's response to the crucial question posed towards the end of the preceding paragraph is clear from the material part of the notes of evidence set out above. Counsel for the plaintiff argued that the three-month period under O 53 r 1(6) only began to run from the date they received a response from the Ministry of Law (on 13 July 2005). A moment's reflection would reveal that such an argument, whilst attractive at first blush, is wholly unpersuasive and even illogical if we take as the general starting point (as we must) that the argument has to be imbued with the quality of balance that is (in turn) the hallmark of justice and fairness. Let me elaborate.

15 If counsel for the plaintiff's argument set out in the preceding paragraph is accepted, this would mean that the three-month period pursuant to O 53 r 1(6) would run *only from a date that was entirely within the control and at the behest of the plaintiff – and no other*. This is because no reasonable person would expect the Ministry of Law to respond to the plaintiff simply because *the Ministry could not possibly respond to a complaint of which it had no notice*. To rule otherwise would be to throw logic, common sense and justice as well as fairness in one fell swoop out of the window. The plaintiff's argument in this regard is wholly unacceptable. What, for example, if the plaintiff (a company) had decided to file a similar application 20 years from now? Or 100 years from now?

16 However, as I have alluded to above, the key focus ought always to be on balancing the rights of the plaintiff and the defendant. To this end, it is my view that *the three-month period under O 53 r 1(6) ought to run from the time the Ministry of Law responded to an inquiry by the plaintiff, and such an inquiry ought to have been sent to the Ministry at a time when a reasonable person in the plaintiff's position would have sent it*. It will be seen immediately that counsel for the plaintiff got it, with respect, "half-right". Getting something "half-right" is of course a contradiction in terms. Something is either "right" or "wrong". As the old adage goes, "a miss is as good as a mile" and so getting something "half-right" is, in substance and effect, *not* getting it right at all. In the specific

context of the facts of the present proceedings, counsel for the defendant, having correctly stated that the three-month period under O 53 r 1(6) ought to run from the date a response is received by the Ministry of Law, omitted to state what the other element of the "equation" was and which I have just referred to – that the crucial point is when *the plaintiff itself* ought to have contacted the Ministry of Law. When I posed this question to counsel for the defendant, it can be seen from the extract from the notes of evidence above that two rather vague and general points were, with respect, made in response.

17 First, counsel for the plaintiff argued that the plaintiff, being a mere licensee, had "no interest as licensees and therefore there is no obligation or duty of the applicants to investigate the plans the authorities have for the land". This is, in my view, a wholly unacceptable argument. The plaintiff was, putting it crudely but accurately in my view, desiring to have its cake and eat it. It is presently seeking the leave of court to assert its *rights*. However, it is only just and fair, as well as logical and commonsensical, that if a party wishes to assert its rights, it must also fulfil its corresponding *duties*. Rights and duties are virtually always mirror images – correlatives in the enterprise which we call the law. Even if there are rare instances when rights and duties are not correlatives, this is certainly not one of those instances. The argument by the plaintiff to the effect that its status as a licensee was sufficient to enable it to drag its heels and choose the time when it sought to impugn the original acquisition of its property flew in the face of logic, common sense as well as justice and fairness.

18 Secondly, counsel for the plaintiff argued that the plaintiff only consulted its solicitors when it had discovered (in *September 2004*) that "the change had taken place and that the land was now residential". It then wrote to the Ministry of Law (*via* its solicitors) on 7 September 2004. At this juncture, it must be said that this argument was rather strange. If there were now concrete plans for the property concerned, was that not an indication that the acquisition was not made in bad faith? (I do pause to note, parenthetically and in fairness to counsel for the plaintiff, that the plaintiff did seek to make out an argument that this change was itself evidence of bad faith – an argument which I rejected (see [47]–[49] below) but which does not impact unfairly on the plaintiff's case at this particular point in the judgment). Ought the plaintiff not to have challenged the acquisition *before* this change took place? Also, since the change itself took place (as counsel for the defendant pointed out) in *1993* (when the Kallang development guide plan was issued), is it not now far too late for the plaintiff to mount any challenge in any event? One key question, which I indeed posed, was this: when ought the plaintiff to have written in to the Ministry of Law? Not surprisingly, counsel for the plaintiff replied that the plaintiff ought to have written in "[w]hen they were advised by the law firm". This led to another key question, which I also posed: when ought the plaintiff to have reasonably sought advice from the law firm? At this point, and not surprisingly perhaps, counsel for the appellant had *no proper response*, and here I reproduce (once again) his response:

> Is it reasonable for the applicants to have gone and investigated as bare licensees? Ultimately, they relied on the licence and the terms of the licence.

19 Given that I have already dealt with the duty of the plaintiff above (at [17]), this was not a satisfactory response at all.

20 What, then, *is* the appropriate timeframe? Here, I reiterate what I had stated earlier (at [16]): *the three-month period under O 53 r 1(6) ought to run from the time the Ministry of Law responded to an inquiry by the plaintiff, and such an inquiry ought to have been sent to the Ministry at a time when a reasonable person in the plaintiff's position would have sent it*. When a reasonable person in the plaintiff's position would have sent such an inquiry depends, of course, on the precise factual matrix and context. What *is* clear, in the context of the present proceedings, however, is that

the plaintiff was clearly out of time. In my view, the plaintiff ought, *by 1993 at the latest*, to have made the necessary inquiry (see [18] above). *This was more than a decade ago*. If so, it is inconceivable that the Ministry of Law would have taken over a decade to respond had the plaintiff sent an inquiry to it at that time or shortly thereafter. And from the time the Ministry did in fact respond, the three-month period under O 53 r 1(6) would, in my view, have begun to run. In this regard, I also note the pertinent observation by Chan Sek Keong J (as he then was), delivering the judgment of the Singapore Court of Appeal in *Basco Enterprises Pte Ltd v Soh Siong Wai* [1989] SLR 150 ("*Basco*") at 158, [19] that a material circumstance which points to the lack of *bona fides* on the part of a plaintiff's claim is its delay in making it. Indeed, I shall have occasion to return to the issue of the plaintiff's own *bona fides* later on in this judgment.

21 It is clear that the present application is clearly out of time and the application therefore fails on this ground without more. However, as I have mentioned, I will (in deference to the arguments set out by counsel for both parties) deal with the situation on the assumption (which I do *not* of course accept) that the application was not out of time. As I have also mentioned above, the application would also fail in any event for the reasons which I now turn to.

Was the standard of proof for the granting of leave satisfied?

22 Assuming that the present application was not out of time (which I have found is *not* the case), would the plaintiff have satisfied the relatively low standard of proof for the granting of leave?

23 The requisite standard of proof has been set out, in the local context, by the Singapore Court of Appeal in *Chan Hiang Leng Colin v Minister for Information and the Arts* [1996] 1 SLR 609, as follows (*per* Karthigesu JA, delivering the judgment of the court at 615–616, [21]–[25]):

> 21 The next question concerns what test the court is to apply at the application for leave stage. We start with Lord Diplock's speech in *IRC v National Federation of Self-Employed* [1981] 2 All ER 93 at p 106:
>
> > My Lords, at the threshold stage, for the federation to make out *a prima facie case of reasonable suspicion* that the Board in showing a discriminatory leniency to a substantial class of taxpayers had done so for ulterior reasons extraneous to good management, and thereby deprived the national exchequer of considerable sums of money, constituted what was in my view reason enough for the divisional court to consider that the federation, or, for that matter, any taxpayer, had sufficient interest to apply to have the question whether the Board were acting ultra vires reviewed by the court. The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses *what might on further consideration turn out to be an arguable case* in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which it is called on to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application. [Emphasis added.]
>
> 22 ***This passage appears susceptible to two slightly different interpretations. One is that the court should quickly peruse the material put before it and consider whether such material discloses 'what might on further consideration turn out to be an arguable case'. The other is that the applicant had to make out a 'prima facie case of reasonable suspicion'. In our view, both tests present a very low threshold and it is questionable***

whether there is really any difference in substance between the two interpretations.

23 In *R v Commissioner for the Special Purposes of the Income Tax Acts, ex p Stipplechoice Ltd* [1985] 2 All ER 465, the English Court of Appeal held that the applicant had shown 'a good arguable case' and has thus, 'established a prima facie case' for judicial review. Leave was then granted in that case despite the applicant having twice been refused leave below. It appears that in *Re Application by Dow Jones (Asia) Inc*, TS Sinnathuray J applied the same test of whether there is an arguable case. It is again questionable whether there is any difference between this test and the one stated in the paragraph above.

24 However, in the Malaysian case of *George John v Goh Eng Wah Bros Filem Sdn Bhd & Ors* [1988] 1 MLJ 319, Lim Beng Choon J appeared to have applied the following test:

> Another requirement at this stage of the proceeding which a court has to consider is that the applicant must produce sufficient evidence to sustain a prima facie case that a public officer or authority that made the decision had acted unlawfully or that he or it had in its exercise of discretion acted ultra vires the power given to him or it under the relevant statute.

25 This case was relied on by Mr Reddy [counsel for the respondent]. In our view, if this case seeks to impose a higher threshold than that of an arguable case, then we ought not to follow it. This is because it would be against the weight of the other authorities. What is required is not a prima facie case, but a prima facie case of reasonable suspicion. If the latter can be shown, then it cannot be said that the application must necessarily fail, for there would then appear to be an 'arguable case'.

[emphasis added in bold italics]

24 Hence, the requisite threshold of proof comprises "a very low threshold". In the context of the present proceedings, therefore, the plaintiff must establish "what might on further consideration turn out to be an arguable case" or a "prima facie case of reasonable suspicion" in its favour. However, I should pause at this juncture to state that this "very low threshold" does not mean that the evidence and arguments placed before this court could be either skimpy or vague. In my view, the fullest evidence and strongest arguments ought indeed to be placed before this court. However, in making its assessment as to whether or not leave should be granted entails, in the words of Lord Diplock in *IRC v National Federation of Self-Employed* (as quoted above), this court making "a quick perusal" of the available material, without going into depth into the issues concerned. At *that* point, the plaintiff ought to have demonstrated, not a *prima facie* case, as such, but (rather) "a prima facie case of *reasonable suspicion*" [emphasis added] (see [23] above). Or, to reiterate the criterion repeated at the outset of this paragraph, the plaintiff must establish "what might on further consideration turn out to be an arguable case".

25 It is my view, having had a quick or cursory look at the available evidence and arguments placed before me by both parties, that the plaintiff does *not* meet even this low threshold standard. On the contrary (and as we shall see), what evidence as is available suggests (even on a quick or cursory look) the *precise opposite*. Indeed, as I shall elaborate upon below, it is the *plaintiff* who appears to have engaged (or indulged, rather) in a speculative attempt to make a profit, without any regard for the underlying rationale of the Act and the public policy (and, more importantly, public benefit) underlying the said Act. This was, although I am loathe to say so, a blatant attempt at private profiteering in total disregard of the wider public benefit. This is, in my view, rather worrying, to say the least. If such a trend is permitted to continue, it would undermine and even damage

irreparably an important part of the legal as well socio-economic fabric that has hitherto contributed so very much to the economic prosperity and social advancement of Singapore. And this is not mere "policymaking" by this (or any other) court. It is merely to state as well as to recognise the intention of Parliament in promulgating the Act. It is undeniable that the Act was – and continues to be – a vital piece of legislation with (as I have just mentioned) important socio-economic purposes. To disregard this would be to not only shut one's eyes to practical reality but also (and more importantly) to the duty placed on this court to administer justice according to the law. So much by way of preliminary (albeit important) observations. I turn now to the arguments of the plaintiff itself.

26 Much turned on s 5 of the Act itself, which I therefore now reproduce in full, as follows:

> **Notification that land is required for specific purposes.**
>
> **5.**—(1) Whenever any particular land is needed —
>
> (*a*) for any public purpose;
>
> (*b*) by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister, is of public benefit or of public utility or in the public interest; or
>
> (*c*) for any residential, commercial or industrial purposes,
>
> the President may, by notification published in the *Gazette*, declare the land to be required for the purpose specified in the notification.
>
> (2) Such a notification shall state —
>
> (*a*) the town subdivision or mukim in which the land is situated;
>
> (*b*) the lot number of the land, its approximate area and all other particulars necessary for identifying it; and
>
> (*c*) if a plan has been made of the land, the place and time where and when the plan may be inspected.
>
> (3) The notification shall be conclusive evidence that the land is needed for the purpose specified therein as provided in subsection (1).

27 The arguments tendered by counsel for the plaintiff were, with respect, rather lengthy and repetitive. However, I pause here to note that this was due to the fact that I afforded the plaintiff every opportunity to place all its evidence and arguments before the court. On a more general level, this is in fact what due process in the context of the adversary system requires – that all parties be given a fair hearing which, in turn, entails the counsel concerned being given the fullest opportunity to render their arguments on behalf of their respective clients. Even then, it was clear (as I have already mentioned) that the plaintiff could not satisfy the very low threshold for leave to be granted by the present court.

28 In essence, counsel for the plaintiff argued that there had been *bad faith* on the part of the defendant. The various alleged manifestations of bad faith took many forms and I shall come to them in a moment. However, one thread that permeated the present proceedings was the fact that the defendant had been remiss in not doing anything with the land for the past 22 years. I therefore deal

with this general point first.

29 An important issue that arises right at the outset is this: why, then, did *the plaintiff itself* wait for 22 years before alleging bad faith on the part of the defendant? In other words, the argument from lapse of time is a double-edged sword. Having regard to my findings above, it is clear that, if at all, it was *the plaintiff* who was remiss in so far as the issue of delay is concerned. I will not reiterate my reasoning, which has already been rendered above when considering the question as to whether or not the application in the present proceedings was out of time in the first instance.

30 Before I turn to the more specific arguments tendered by counsel for the plaintiff, it would be apposite to consider the conclusive evidence provision as embodied in s 5(3) of the Act and as reproduced above (at [26]). Taking the language of the provision on its face, the meaning is clear: the notification is conclusive evidence that the land is needed for the purpose specified therein and which satisfies one or more of the purposes set out in s 5(1) itself (also reproduced above at [26]). Section 5(3) is in fact consistent with the underlying rationale and purpose of the Act itself and, in particular, with the idea that the relevant government authority is in the best position to determine whether or not the land concerned is required for one or more of the purposes set out in s 5(1). That this has always been the case has been acknowledged, time and again, in the case law. At this juncture, I should point out that the Act had its origins in Indian legislation, although it has now been modified to take into account the unique needs of Singapore (see generally, N Khublall, *Compulsory Land Acquisition – Singapore and Malaysia* (Butterworths Asia, 2nd Ed, 1994) ("Khublall") at p 8). In particular, the corresponding Indian legislation in many Indian states has the exact equivalent of s 5(3) of the Act. Hence, the relevant Indian case law is, in my view, relevant. As already alluded to, this case law underscores the proposition just referred to to the effect that the government is in the best position to determine the purpose(s) for which a particular piece of land is to be acquired (which are all facets of the basic concept of "public purpose"). The cases are too numerous to enumerate here and it must suffice for our present purposes to refer to the relevant pages in the leading Indian textbooks (see, for example, Justice G C Mathur, *V G Ramachandran's Law of Land Acquisition and Compensation* (Eastern Book Company, 8th Ed, 1995) ("*Ramachandran*") at pp 323–324); P K Sarkar, *Law of Acquisition of Land in India (Including Requisition & Acquisition of Immovable Property)* (Eastern Law House, 1998) ("Sarkar") at pp 12, 104 and 211); D N Sen, *A Ghosh's Laws of Compulsory Acquisition & Compensation in India and The Land Acquisition Act, 1894* (R Cambray & Co Private Ltd, 8th Ed, 1995) ("*Ghosh*") at pp 109-111; and Harbans Lal Sarin & M L Sarin, *Aggarwala's Compulsory Acquisition of Land in India* (The University Book Agency, 7th Ed, 1995) ("*Aggarwala*") at pp 258–259).

31 Indeed, it has been held that even where there is *no* provision equivalent to s 5(3) of the Act, this will still be the case. In the oft-cited Privy Council decision on appeal from the Supreme Court of Ceylon in *Wijeyesekera v Festing* [1919] AC 646, Lord Finlay, who delivered the judgment of the Board, observed thus (at 649):

> It appears to their Lordships that the decision of the Governor that the land is wanted for public purposes is final, and was intended to be final, and could not be questioned in any Court.

32 In this particular case, the material provisions were ss 4 and 6 of Ceylon Ordinance No 3 of 1876. Section 4 provided thus:

> Whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose, it shall be lawful for the Governor to direct the Surveyor-General or other officer generally or specially authorized by the Governor in this behalf, to examine such land and report whether the same is fitted for such purpose.

33 And s 6 of the same Ordinance provided as follows:

> The Surveyor-General, or other officer so authorized as aforesaid, shall then make his report to the Governor, whether the possession of the land is needed for the purposes for which it appeared likely to be needed as aforesaid. *And upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government Agent to take order for the acquisition of the land.* [emphasis added]

34 Lord Finlay observed thus ([31] *supra* at 649):

> The whole case is decided, in the opinion of their Lordships, in the last three lines of s.6 of the Ordinance: "And upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government agent to take order for the acquisition of the land." When you have an enactment of that kind it shows that it was intended that the decision of the Governor in Executive Council on the point should be binding.

35 It will be seen that *nowhere* in the Ceylon Ordinance is there the equivalent of s 5(3) of the Act. Looked at in this light, Lord Finlay's observations as reproduced above (at [31]) are particularly significant since the *substance* of s 5(3) of the Act has in fact been *implied or read into* the context and matrix of the Ceylon Ordinance itself. Indeed, the holding in this decision and (more importantly) observation contained in the last-mentioned sentence were highlighted by Chua J in the Singapore High Court decision of *Galstaun v Attorney-General* [1980–1981] SLR 345 ("*Galstaun*"). The learned judge observed thus (at 346–347, [9]–[10]):

> The Government is the proper authority for deciding what a public purpose is. When the Government declares that a certain purpose is a public purpose it must be presumed that the Government is in possession of facts which induce the Government to declare that the purpose is a public purpose.
>
> In *Vijeyesekera v Festing* [1919] AC 646, their Lordships of the Privy Council observed that the decision of the Governor of Ceylon on the question whether land was needed or not for public purpose was final *even though in the Land Acquisition Ordinance of Ceylon there was no conclusive section corresponding to our section 5(3) of the Act.*
>
> [emphasis added]

36 However, does that mean that s 5(3) of the Act cannot be questioned in any court? This is not an implausible proposition, having regard to the nature and policy of the Act itself. However, *bad faith*, particularly in the *governmental* context, does not sit easily in any (and, especially, the modern-day) context. In my view, and viewing the matter from the particular perspective of land acquisition in the Singapore context, it is imperative that a *balance* be found in the tension between ensuring that the purposes of the Act and the ensuing public benefit are achieved on the one hand and ensuring that there is no abuse of power on the other. In this regard, it is important to note that the Act was promulgated not only for the public benefit but also because land is an extremely scarce and therefore valuable resource in the Singapore context. These are in fact inextricably related reasons. This being the case, it is clear why much more latitude and flexibility is given to governmental authorities. As a corollary, it is not the task of the courts to sit as makers of policy. This would in fact be the very antithesis of what the courts ought to do. But latitude and flexibility stops where abuse of power begins. Such abuse of power is most commonly equated with the concept of *bad faith*. At this point, the courts must – and will – step in. But, in the nature of both the concept itself, such abuse of power will not be assumed (let alone be found) at the slightest drop of

a hat. It is a serious allegation. There must be proof. In proceedings such as these, there must be sufficient evidence, produced in its appropriate context, that establishes that a "prima facie case of reasonable suspicion" of bad faith exists.

37 The leading decision that tells us when the courts can interfere, even in the face of the very clear language of s 5(3) of the Act, is the Malaysian Privy Council decision of *Syed Omar bin Abdul Rahman Taha Alsagoff v The Government of the State of Johore* [1979] 1 MLJ 49 ("*Syed Omar*"), where Viscount Dilhorne, delivering the judgment of the Board, observed as follows (at 50):

> *Section 8(3)*, as has been said, provides that the Declaration shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein. While it may be possible to treat a Declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers (see ***Anisminic v Foreign Compensation Commission***[[1969] 2 AC 147]) or that the purpose stated in the Declaration does not come within s 3, *in the absence of bad faith*, which in the instant case is negatived by concurrent findings of fact in the courts below, this subsection renders it not possible to challenge its validity by asserting that some of the land to which it relates is not needed for the purposes stated or that the land is in fact wanted for purposes other than those specified. Consequently the fact that the lands listed in the Schedule amounted to some 5,700 acres when the total area of the State Development Officer's original requirements was 2,000 acres does not help the appellants, nor can it really be contended that the purposes stated in the Declaration do not come within section 3. [emphasis added]

38 Section 8(3) of the Malaysian Land Acquisition Act 1960 (Act 486), referred to in the above quotation, is of course the equivalent of s 5(3) of the Singapore Act. More importantly, the emphasis of the Board was on the need for there to be a finding of *bad faith* on the part of the acquiring authority before the courts would go behind the notification, notwithstanding the provisions in s 8(3). Instances of this (indicated in the above quotation) include the acquiring authority having misconstrued its statutory powers or the purpose stated in the declaration issued by the acquiring authority not coming within any of the purposes of the statute (here, the equivalent of s 5(1) of the Act).

39 The principles laid down in *Syed Omar* have since been re-affirmed in subsequent cases. In the Malaysian Federal Court decision of *S Kulasingam v Commissioner of Lands, Federal Territory* [1982] 1 MLJ 204, for example, Abdoolcader J, delivering the judgment of the court, observed thus (at 211):

> The conclusive evidence clause in section 8(3) which we have mentioned in effect provides that the decision of the State Authority that the land is needed for the purpose specified under section 8(1) is final and conclusive and cannot be questioned (*Wijeyeskera v Festing* [see also above at [31]]). The Privy Council however held in *Syed Omar Alsagoff & Anor.* v. *Government of the State of Johore* (at page 50) that it may be possible to treat a declaration under section 8 as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers *or* that the purpose stated therein does not come within section 3 *or if bad faith can be established*. The purpose of the acquisition can therefore be questioned *but only to this extent*. [emphasis added]

40 Read literally, the above passage just quoted would appear to have introduced a slight modification inasmuch as it suggests that bad faith is a separate and distinct ground for questioning the purpose of the acquisition, notwithstanding the presence of s 8(3) of the Malaysian Land Acquisition Act (or s 5(3) of the Act). However, as I have suggested above (at [38]), the former two instances mentioned in the preceding paragraph appear to be particular instances or examples of bad

faith which, by its very nature, is a much broader umbrella category. Be that as it may, it does not really make much difference, in my view, in so far as the substance and justice of the inquiry is concerned. Indeed, counsel for the defendant did not question the decision in *Syed Omar* but, on the contrary, endorsed it as demonstrating the proposition that, notwithstanding s 5(3) of the Act, the court can set aside (or, in this case, grant leave to commence proceedings to set aside) an acquisition that was tainted by bad faith. That this is the law in the Indian context as well has been emphatically stated in the leading textbooks, citing numerous cases as authority (see, for example, *Ramachandran* at pp 321–327; Sarkar at pp 109–111, 208–209 and 354–357; *Ghosh* at pp 206–207 and 214–215; and *Aggarwala* at pp 242, 246, 257–265). Needless to say, counsel for the plaintiff relied on *Syed Omar* as well. Finally, it should be noted that *Syed Omar* was itself also cited in *Galstaun* ([35] *supra*).

41 However, it should be acknowledged that an allegation of bad faith is a *serious* one that, even in applications for leave (such as is the case here), ought to be treated accordingly. Indeed, in the Malaysian Privy Council decision of *Yeap Seok Pen v Government of the State of Kelantan* [1986] 1 MLJ 449, Lord Griffiths, delivering the judgment of the Board, emphasised (at 453) that "the burden … lay upon him who asserted bad faith to at least establish a *prima facie* case". The learned law lord proceeded to observe as follows (see *ibid*):

> This is the correct approach. He who asserts bad faith has the burden of proving it, mere suspicion is not enough. In deciding whether the burden is discharged, the court will consider all the evidence before it, including any explanation given by the Minister and any inference to be drawn from the failure to give an explanation.

42 In the context of the present application (which related to one for leave), the burden would of course be to establish (as I have repeatedly mentioned) a "prima facie case of reasonable suspicion" of bad faith only. However, this would entail more than mere assertion and/or the adduction of merely scanty evidence without more.

43 Turning, then, to more specific arguments tendered by counsel for the plaintiff in which bad faith on the part of the defendant was alleged, it was first argued that the power to acquire the land was "exercised arbitrarily" and that the "[o]nly inference is that plaintiff's land was acquired for resale".[note: 1] As counsel for the defendant pertinently pointed out (together with an affidavit from Sim Hwee Hong (a planner working in the Urban Redevelopment Authority) and, more importantly, the exhibits appended thereto), the land had always been intended for public use. Referring to the 1985 Master Plan, counsel for the defendant pointed out that the zoning for the land had been changed into a comprehensive development area (compared to the 1980 Master Plan, where the lands that surrounded the land in question which was acquired subsequently in 1983 were zoned for industry).[note: 2] Subsequently, and pursuant to the 1998 Master Plan, the land had been rezoned into three different types of zones – part residential, part open space and part beach area, which is still the current position as of today.[note: 3] Indeed, counsel for the defendant further pointed out that, in addition to a beach area, "[p]ark connectors move seamlessly through [the plaintiff's] land".[note: 4] These documents in fact spoke for themselves. There is absolutely no evidence whatsoever to suggest that the land had been acquired for resale without more.

44 Secondly, counsel for the plaintiff argued that as the land was needed for residential purposes, it should have been acquired under s 5(1)(*c*) instead of s 5(1)(*a*) of the Act. This particular argument did not seem to me to have any merit at all, even on a cursory consideration which was all that I was supposed to do, given the nature of the present proceedings. Let me elaborate.

45 In the first instance, and as I have already mentioned, the land was *not* in fact *originally*

zoned for residential purposes. In point of fact, the land is part of a comprehensive development area (which now includes residential purposes). Given the variegated nature of the plans, all that remains for me is to ascertain whether such plans are intended for a "public purpose" (it will be recalled that in the original declaration itself, it was stated that the land was "needed for a public purpose, viz.: General Development"). Section 5(1)(*a*) itself clearly and unambiguously states that land can be acquired for "*any* public purpose" [emphasis added]. No reasonable person would argue that the plans just mentioned are not intended for a public purpose. Indeed, it would appear that the plans would serve *many* public purposes. The Kallang area, in which the plaintiff's land is situated, has been zoned for a number of public purposes. As I have noted, the land itself has been zoned into at least three different zones. On this ground alone, the plaintiff's argument has no merit whatsoever.

46 In any event, it is clear, in my view, that an even cursory reading of s 5(1) indicates, *inter alia*, that there is a clear overlap amongst the limbs contained therein. In particular, it is clear that s 5(1)(*a*), as the broadest limb, would also encompass the more specific situations under ss 5(1)(*b*) and 5(1)(*c*). Contrary to counsel for the plaintiff's argument, I do not see anything untoward in having such an overlap. Indeed, as we shall see, there is at least a possible argument that s 5(1)(*c*) might not be rendered otiose inasmuch as it might cover situations that lie beyond the sphere of the public purpose (see [50] below). I also note the decision of Arulanandom J in the Malaysian High Court decision of *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang* [1977] 2 MLJ 45, where it was held, first, that the word "any" in the Malaysian equivalent of s 5(1)(*a*) of the Act was *not* confined to the singular; in the learned judge's words (at 47):

> It is quite clear from this interpretation that "any" does not mean the singular and that it is not necessary for parliament to say "any" or "all" to allow the plural. The State Authority's right to choose the particular purpose or purposes is neither restricted nor limited by the Act. To substitute "all" for "any" would lead to absurdity as the purposes of acquisition may be for only a few specific purposes. The discretion therefore is left with the State Authority to choose an area of land for whatever purpose or purposes it needs to acquire it. Again, to interpret the Act so as to read that each particular purpose for each particular lot of land must be specified in the notice of intended acquisition would also lead to absurdity. One of the canons of construction is that there is a presumption against interpretation of words which interpretation would lead to inconvenience, injustice, absurdity or unreasonableness. The State Authority may acquire an area for a public purpose. The area may necessarily consist of different lots of different sizes and different shapes. The object of the acquisition may be to create an industrial estate with the necessary infrastructure. This would mean that parts of the scheduled land, I repeat scheduled land, and not specific lots, may be used for the construction of factories, part of the land for construction of the roads, part of the land for constructing drains, part of the land for constructing residential houses, part for schools, *ad infinitum*. In order to derive the maximum benefit from all the lands it would only be possible to do the planning after the Government has acquired and taken possession of the land. For the Notice of Intended Acquisition to specify what particular purpose any particular lot would be put to would be to court absurdity and unreasonableness. It has been made very clear by the evidence given on behalf of the defendants that it would not be possible or practical to specify the exact purpose of any particular lot. The court is wholly in agreement with this statement. Furthermore, apart from this being impractical, it does not help the plaintiffs in any way for, if the land is acquired for a public purpose they have no choice but to surrender the land to the Government, and it is immaterial to them for what purpose the land is being used, as long as it is for a public purpose. It may be that these acquisitions mean individual hardship is caused to individuals but in considering these matters one must realise that individual issues cannot outweigh demand for public benefit.

As, if not more, importantly, are Arulanandom J's following observations which merit extensive

quotation as follows (at 48):

> Counsel for the plaintiffs also urged before me that the word "or" in s 3 of the Act should be read disjunctively. I can only refer to *Maxwell On Interpretation of Statutes* page 232 under the heading, "And" or "or", which states:-
>
> > "In ordinary usage 'and' is conjunctive and 'or' disjunctive. But to carry out the intention of the legislature it may be necessary to read 'and' in place of the conjunction 'or,' and vice versa."
>
> An example is provided by the Bankruptcy Act, 1603, which made it an act of bankruptcy for a trader to leave his dwelling-house "to the intent, or whereby his creditors shall or may be defeated or delayed." If construed literally, this would have exposed to bankruptcy every trader who left his home, even for an hour, if a creditor called during his absence for payment. This absurd consequence was avoided by reading "or" as "and" so that an absence from home was an act of bankruptcy only when coupled with the design of delaying or defeating creditors.
>
> Therefore in this case the State Authority need not confine its acquisition of land for purposes which come under one head only, ***i.e.,*** either under 3(a), 3(b) or 3(c). They may use either head individually or may combine one or two of them as the case may be. Not to allow the interpretation of "or" as capable of meaning "and" would lead to an absurd construction of the section. Furthermore to read "and" for "or" in section 3 of the Act would again lead to absurdity because it would mean that the State Authority would only be able to acquire land if all these limbs of section 3 were satisfied. The only intelligent reading of section 3 would be to give the State Authority right either to acquire land under one limb, of section 3(a), (b) or even part of the limb of section 3(c), or to combine more than one of these purposes at the time of the acquisition.

Reference may also be made to the (also) Malaysian High Court decision of *United Malacca Rubber Estates Bhd v Pentadbir Tanah Daerah Johor Bahru* [1997] 4 MLJ 1 at 15–16.

47 It is also clear, in my view, that if there has been a change of purpose over time, that is itself not evidence of bad faith – so long as the original purpose was not itself tainted by bad faith. It was not, for instance, argued by counsel for the plaintiff that the original acquisition was colourable in the sense that there was no intention to acquire the land for a public purpose. This would be the case where, for example, it was actually acquired because some individual within the authority had a grudge against the plaintiff or someone associated therewith and had initiated the acquisition of out of malice or revenge. Nor was it argued that the subsequent change of purpose was tainted by bad faith. This would be the case where, for example, there was a change to a purpose that was clearly intended to benefit a private individual. A blatant instance of this would be where the purpose was changed because there had been a covert and corrupt deal between a government official and a private individual. The situation in the present proceedings was, in distinct contrast, clear and clearly above board. Indeed, as Krishna Iyer J, delivering the judgment of the Indian Supreme Court in *Gulam Mustafa v The State of Maharashtra* AIR 1977 Supreme Court 448, put it (at 449):

> There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the … declaration.

(See also the (also) Indian Supreme Court decision of *Mangal Oram v State of Orissa* AIR 1977 Supreme Court 1456 at 1459).

48 Counsel for the defendant also cited *Basco* as illustrating this proposition to the effect that a change of purpose (in that case, from urban redevelopment to conservation and preservation) was neither illegal nor bad. In *Basco*, it was held that the definition of "urban redevelopment" under the Urban Redevelopment Authority Act (Cap 340, 1990 Rev Ed) included reconstruction and repair. Counsel for the defendant argued that a similar approach ought to be adopted in the present proceedings. He referred, in particular, to s 3(1) of the Planning Act (Cap 232, 1998 Rev Ed), which reads as follows:

> **Meaning of "development"**
>
> **3.**—(1) Subject to subsections (2) and (3), in this Act, except where the context otherwise requires, "development" means the carrying out of any building, engineering, mining, earthworks or other operations in, on, over or under land, *or the making of any material change in the use of any building or land*, and "develop" and "developing" shall be construed accordingly. [emphasis added]

49 Quite apart, however, from the argument in the preceding paragraph, as I have already alluded to above, the fact that an initially legitimate purpose changes over time into an equally legitimate purpose cannot, by any stretch of the imagination, be evidence of bad faith. Land acquisition and urban planning must be viewed in their respective contexts. Generally, too, what I have just stated is simply consistent with common sense, logic as well as justice and fairness. Indeed, as Sharma J, delivering the judgment of the court in the Indian Supreme Court decision of *State of Maharashtra v Mahadeo Deoman Rai* [1990] 2 SCR 533, very aptly put it (at 538):

> A particular scheme may serve the public purpose at a given point of time but due to change of circumstances it may become essential to modify or substitute it by another scheme. *The requirements of the community do not remain static; they indeed, go on varying with the evolving process of social life. Accordingly, there must be creative response from the public authority, and the public scheme must be varied to meet the changing needs of the public.* [emphasis added]

50 Counsel for the defendant in fact went further. He argued that "[f]or s 5(1)(*c*), the difference is that one does not even need to prove a public purpose" and that "[i]t is a very powerful tool".[note: 5] If s 5(1)(*c*) is viewed literally, there would appear to be much force in this particular argument, for the reference there is simply to "*any* residential, commercial or industrial purposes" (emphasis added). This is not to state that s 5(1)(*c*) could not encompass acquisitions where there *was* a public purpose. However, it could conceivably extend to situations where there was in fact *no* public purpose. If so, the provision could encompass situations where land was acquired with a viewing to selling it to private developers. Even then, I would have thought that there would *still* be an element of public purpose since such a sale would have been effected with a view to putting the entire surrounding physical environment to its best use. So it was unnecessary, in my view, for counsel for the defendant to go as far as he did. But this particular issue need not detain us much longer because it does not really impact on the questions before the court in the present proceedings. Counsel for the defendant, in my view, put it well when he summarised this part of his case thus:[note: 6]

> Our argument is a very simple one. The URA [Urban Redevelopment Authority] needed the land for general redevelopment which includes getting rid of incompatible uses and re-looking the entire land use of that particular area. They acquired that for a public purpose and there is nothing wrong with that, as confirmed by *Basco*.

51 However, since the issue was dealt with in some detail by counsel for both parties during the present proceedings, I will make a few passing observations. The view which I have tentatively expressed above to the effect that there is much to be said for counsel for the defendant's argument to the effect that s 5(1)(*c*) was intended to have a much *broader* effect and meaning appears to be supported by the relevant legislative history. I note, in particular, the following observations by the then Prime Minister, Mr Lee Kuan Yew, made during the Second Reading of the Land Acquisition (Amendment No 2) Bill (see *Singapore Parliamentary Debates, Official Report* (10 June 1964) vol 23 at col 26):

> The Explanatory Statement of the Bill sets out the contents of the Bill. *Section 5 of the principal Ordinance* which provided for the acquisition of land for public purposes has been *redrafted* to define specifically *and enlarge the meaning of "public purposes".* This redraft, which is more specific, follows the Federal Land Acquisition Act and is considered desirable in view of the increasing tempo of public development and the need to acquire land for a variety of public purposes, *including* residential development by the Housing and Development Board, industrial development by the Economic Development Board, as well as urban renewal of the City as envisaged in the next few years. [emphasis added]

52 The above passage appears to support the interpretation I have taken to the effect that whilst the legislative intention behind s 5(1) of the Act in general and s 5(1)(*c*) in particular is indeed broad, any acquisitions pursuant thereto (including s 5(1)(*c*)) would still be regarded as serving the "public purpose" (but *cf* Khublall at p 24). This might conceivably include the acquisition of land for resale to private developers. Arguably, such a purpose might not have fallen within the rubric of "public purpose" under s 5(1)(*a*) in the *traditional* sense of the term but would probably be considered to do so now. I refer, in particular, to the phrase, "*enlarge the meaning of* 'public purposes'" [emphasis added], in the quotation in the preceding paragraph. This particular legislative amendment was in fact ultimately incorporated into the present Act (for further legislative background, see [64] below).

53 Counsel for the plaintiff, however, argued (in effect) quite to the contrary, relying on extracts from the *Report of the Select Committee on the Land Acquisition Bill* (Parl 9 of 1966, 10 September 1966) ("*Select Committee Report*"). In particular, he referred to the then Minister for Law and National Development's (Mr E W Barker's) views at p C 31 of this *Report* and argued that the purpose of s 5(1)(*c*) of the Act was to enable the Government to acquire land which was ready for development but which could not be developed by the owners themselves. This was, in contrast to the approach adopted by counsel for the defendant, an extremely *narrow* view. With respect, a close perusal of the exchange on that specific page *in context* will reveal that the focus was on *urban renewal* rather than whether or not the owners could develop the land themselves. More importantly, the reference to "development" was *not* to "development" from the *owner's* perspective. Looked at in this light, it was clear that whilst the plaintiff in the present proceedings was of the view that it had had the funds to "develop" the land to *their* satisfaction, this was *not* "development" in the *wider societal (or public) sense* – which was what I took the Minister to be referring to (see also the *Select Committee Report* at pp C4 to C5). Indeed, as I have alluded to above, counsel for the defendant went one step further: he was of the view that the Government had ultimately rejected attempts (in particular, in the extract presently considered, by the Singapore Bar Committee) in narrowing the meaning of s 5(1)(*c*) by including an *express* reference to the public benefit (see also p C74 of the *Select Committee Report*, which includes a suggest amendment to this effect by the Singapore Bar Committee itself). This argument is not unpersuasive, but is difficult, as I have already alluded to above, to square with the views I have quoted from the *Singapore Parliamentary Debates* (at [51] above), which counsel for the defendant himself stated must take precedence over any views expressed in the *Select Committee Report* itself. Be that as it may, as this particular issue is not

crucial to the decision in the present proceedings, I will say no more and leave it to a future case when the issue arises directly for decision. It is clear, however, that the narrow interpretation of s 5(1)(*c*) proffered by the plaintiff is, as I have just mentioned, wholly without merit as it attempted to *substitute its own (self-interested)* conception of "development" for a quite different (and broader) conception of "development" that was intended by the Singapore Parliament in so far as s 5(1)(*c*) was concerned. This attempt was, in my view, clearly motivated by a self-interest that was completely at odds with the spirit of public purpose and benefit that constituted the *raison d'être* of the Act itself.

54 It would, at this juncture, be appropriate to refer briefly to *Galstaun*. It will be recalled that, in that case, the court emphasised that "[t]he Government is the proper authority for deciding what a public purpose is" and that there was a presumption that the Government was in possession of the relevant facts that induced it to declare that the purpose is a public purpose (see [30]–[35] above). It is equally important to recall that the court *also* cited, with approval, the general principle centring on bad faith laid down by Viscount Dilhorne in *Syed Omar* (see [37] above). *Yet*, the court found, in the final analysis, that there had been no bad faith on the part of the government on the facts in the case itself. What were the salient facts? Put in a nutshell, the plaintiffs' land had been acquired for a public purpose – the Orchard Boulevard Extension. However, as it turned out, Orchard Boulevard having been constructed, there remained an excess of the (plaintiffs') land. The plaintiffs then sought, *inter alia*, a declaration that the purported acquisition in relation to the apparent and actual excess of their land was both *ultra vires* as well as illegal. It was in fact conceded by the Collector of Land Revenue that an area of 1529.5m² of the plaintiffs' land was maintained as an open space with plants and trees. Chua J's succinct (and, if I may say so, highly perceptive) response to the plaintiffs was as follows ([35] *supra* at 348, [18]):

> In the present case there is no dispute that the Orchard Boulevard is a public purpose and there is no evidence that the power was exercised for any other purpose. There is no suggestion that there were mala fides on the part of the Government.

55 I do not think that the learned judge was stating (in the preceding quotation) that the plaintiff had not suggested that there had been *mala fides* on the part of the Government. After all, that was the central thrust of their claim, being based as it was on both the doctrine of *ultra vires* as well as illegality. It is clear that Chua J was referring to the fact that he had found no *mala fides* on the facts of the case itself. Indeed, the decision in *Galstaun* demonstrates the latitude and flexibility that must be accorded to the acquiring authority, particularly in the context of land acquisition (including the need for a legitimate change of purpose as circumstances change over time). This is why s 5(3) of the Act was promulgated in the form it is. The allegation of bad faith or *mala fides* is not one that ought to be taken lightly – even in proceedings such as these where only a low threshold of proof is required. It is clear, in my view, that there was, on the facts of the present case, no bad faith on the part of the defendant.

56 Interestingly, at the time the land was acquired, it was in fact surrounded by state land. Any development for a public purpose would in fact have been hampered by the land concerned embedded, as private property, right in the middle of the said state land.

57 As interestingly at least is the fact that the plaintiff had purchased the land from the previous owner not long prior to its acquisition and after the acquisition, had successfully obtained an increase in the compensation awarded to it in the sum of $4.2m (see the Singapore Court of Appeal decision of *Teng Fuh Holdings v Collector of Land Revenue* [1988] SLR 44 ("*Teng Fuh Holdings*") (see also [12] and [13] above). Indeed, the plaintiff had entered into a contract with the previous owner of the land dated 15 March 1982, although it (the plaintiff) had in fact been granted an option much

earlier on (on 17 March 1979), which option (to purchase the land for the sum of $3.5m) had in fact been exercised. The sale and purchase of the land was completed on 2 August 1982 and the plaintiff took a transfer, a conveyance and an assignment, all dated 12 August 1982. When the land was acquired, the plaintiff was initially awarded $3.5m. This was, in fact, the exact amount involved when the:

> … instruments of transfer, the total consideration of which was agreed to be $3.5m (rounded up), were presented to the Commissioner of Stamp Duties in the Stamp Office under the Stamp Duties Act (Cap 312) and the consideration stated in them was accepted by the Commissioner of Stamp Duties for the purpose of assessing the stamp duties payable thereon.

(See *Teng Fuh Holdings*, at 46, [2]). As we have seen, the plaintiff was ultimately awarded compensation of $4.2m. Commercially speaking, it was in fact *better off* at that particular point in time.

58 Now, after some 22 years, the plaintiff has nevertheless brought the present application. This brings us in fact to the next point – which switches perspectives, as it were, completely inasmuch as the focus will now be on *the plaintiff*. It will be recalled that, thus far, the allegations of bad faith have been made by the plaintiff with reference to the defendant. What is sauce for the goose is sauce for the gander. More elegantly put, perhaps, the allegation of bad faith may in fact cut both ways. I would not be prepared to go so far as to state that there was clearly bad faith displayed on the part of the plaintiff. After all, this was just a hearing as to whether or not leave was to be granted to the plaintiff to apply for an order of *certiorari* as well as for an order of *mandamus*. However, I would be prepared to state that the plaintiff's own position or situation casts some doubt on its case and, more importantly, on its allegations that it was the defendant who had been guilty of bad faith. Let me elaborate.

59 We begin with a point already referred to in the preceding paragraph. The plaintiff received some $4.2m – a not insignificant amount at the time and not insignificant even by today's standards. It has had the use of that not inconsiderable sum of money for a relatively lengthy period of time. However, the plaintiff is, I believe, willing to return that sum if the land is returned to it. Nevertheless, although no formal valuation was effected, it is clear that the land is now worth considerably more than $4.2m. Land prices in Singapore have risen consistently – even steeply – over the period in question. This is so obvious that I can take judicial notice of it, quite apart from the plaintiff's own admission that the price of the land had risen tremendously. The land that is the subject of the present proceedings is of course no exception. Indeed, as we have seen, it now lies in a contemplated hub in and around the Kallang area. It would not in fact be unreasonable to state that the land is worth multiples of $4.2m. The plaintiff is, as I have pointed out, no babe in the woods. It is a shrewd commercial entity that cannot possibly have failed to see the immense economic advantage of having the land now returned to it. This raises a related (but very important) question, to which I now turn.

60 Granted that the land is now worth a lot more than it was at the time it was acquired, what accounts for this rise in value? Although the plaintiff continued to occupy the land as a licensee, it did not – nor could it, in my view – claim to have enhanced the value of the land by virtue of that fact. On the contrary, the rise in value of the land is due to external factors. If so, the return of the land to the plaintiff would result in an unprecedented and, in my view, unjustifiable windfall to the plaintiff. The plaintiff, as a reasonable person, must surely have been aware of it. Yet, it was astute in not raising the point at all throughout argument before me. The reason is obvious.

61 The situation I have outlined briefly in the preceding paragraphs is not legally irrelevant. Nor

is it merely a question of commercial morality, which is itself a controversial concept since to many business persons, such a concept is a contradiction in terms. I make no pronouncement on the issue of commercial morality because it does not arise for decision here. What *is* relevant for our present purposes is the fact that *the prevention of economic windfalls is one of the key policies underlying the Act*. This fact permeates the relevant *Parliamentary Debates*. I will refer to only a sample.

62 I refer, first, to the following observations by the then Prime Minister, Mr Lee Kuan Yew, during the Second Reading of the Land Acquisition (Amendment No 2) Bill, to which I have had occasion to refer ([51] *supra* at col 25):

> In the debate on the 16th of December last year on the Development Estimates for 1964, when debating the question of increased land values and the cost of land acquisition, I stated *two broad principles* which would guide the Government in amending legislation on the acquisition of land, namely, first, that *no private landowner should benefit from development which had taken place at public expense*; and, secondly, that the price paid on the acquisition for public purposes should not be higher than what the land would have been worth had the Government not contemplated development generally in the area. *I said then that I would introduce legislation which would also help to ensure that increases in land values, because of public development, should not benefit the landowner, but should benefit the community at large. Land is a fixed commodity, and with mounting pressure on land as a result of population expansion and development, land values tend inevitably to rise. But for public purposes of acquisition, we attempt in this Bill to exclude the landowner from windfall gains in increases of land values as a result, first, of either public expenditure already incurred in the area, or speculative increases in the price of land in an area which has been earmarked for development*. [emphasis added]

63 And in a Statement by the then Minister of Law, Mr E W Barker, on the Land Acquisition Bills, it was observed (in a similar vein) as follows (see *Singapore Parliamentary Debates, Official Report* (16 June 1965) vol 23 at col 811):

> The main provision in the Land Acquisition (Amendment No. 2) Bill is to ensure that increases in land values as a result of public development should not benefit the owner, but should benefit the community at large. *The Bill aimed to save the Government from having to give land-owners windfall gains and increases in value as a result of public expenditure incurred in the area*. [emphasis added]

64 By way of a historical perspective that in no way impacts on the *substance* of the statements quoted above, the observations in the preceding two paragraphs related to the second of two Amendment Bills to the then Land Acquisition Ordinance. This – as well as the previous – Bill were ultimately integrated into a revised consolidated Land Acquisition Bill, which forms the basis of the present Act. Indeed, the former Bill (ultimately enacted, it appears, as the Land Acquisition (Amendment) Ordinance 1964 (Ord 1 of 1964)) was intended merely to introduce certain interim provisions, with the latter Bill being intended to "make major alterations in the law regarding acquisition of private land for public purposes" (*per* the then Prime Minister, Mr Lee Kuan Yew, see [51] *supra* at col 23). This particular Bill did not therefore deal with amendments to s 5 as such (which were introduced, instead, in the latter Bill (and see [51] above). In introducing the Second Reading of the latter Bill, the then Minister for Law and National Development, Mr E W Barker observed thus (see *Singapore Parliamentary Debates, Official Report* (22 June 1966) vol 25 at col 133):

> [T]his Bill embodies (in the form of a revised consolidated Act) both the provisions in the existing law, that is to say, the Land Acquisition Ordinance, Chapter 248, as well as the provisions in the Land Acquisition (Amendment No. 2) Bill. The major departures from existing legislation are:—

(1) the assessment of compensation provisions have been re-drafted on the basis of two principles enunciated by the Prime Minister in December 1963 [see *Singapore Parliamentary Debates, Official Report* (16 December 1963) vol 22 at col 653]. Firstly, that *no landowner should benefit from development which has taken place at public expense* and, secondly, that the price paid on acquisition of land for public purposes should not be higher than what the land would have been worth had the Government not carried out development generally in the area, and

(2) provision has been made for the hearing of appeals by an Appeals Board instead of the Court as at present.

[emphasis added]

65 When moving the Third Reading of this Bill, Mr Barker was even more direct. Indeed, what follows is a particularly important set of observations that therefore merits setting out in full (see *Singapore Parliamentary Debates, Official Report* (26 October 1966) vol 25 at col 410):

Mr. Speaker, Sir, the Bill as now tabled before the House incorporates the recommendations of the Select Committee. I do not propose to burden the Members of this House with unnecessary explanations, but there are two fundamental provisions on which there have been representations which were unacceptable and which I wish to take this opportunity to reiterate.

The first of these is the compensation provision in the Bill. As has already been explained in this House previously, the principle underlining this provision is that *no landowner should benefit at the public's expense, from any windfall gains resulting from enhancement of land values either through Acts of God or because of public expenditure in the neighbourhood*. Members are aware of the phenomenal increases in land values which result when heavily encumbered lands are devastated by fire. This fortuitous increase in value will not now go to the landowner. *Again, development by Government and public authorities in areas like* Jurong, *Kallang Basin* and Kranji *has resulted in phenomenal increases in land values in these neighbourhoods. It was ironical that under the existing legislation, when additional lands in these areas had to be acquired for public purposes, Government had to pay compensation at values which Government itself had helped to enhance. The element of enhancement attributable in these cases to public participation (as opposed to participation by the private sector), is the element which under the new Bill will be creamed off when land is acquired for public purposes.*

[emphasis added]

66 The observations quoted in the preceding two paragraphs reiterate one of the fundamental policies behind the Act – which is that there should be no economic windfalls accruing to landowners. More significantly, perhaps, in the observations set out in the preceding paragraph is the Minister's direct reference to *the Kallang Basin*, wherein of course *the land in the present proceedings is situated*. Interestingly, even at *that* particular point in time, which was *well over a decade prior to the plaintiff's own purchase of the land* that is the subject of the present proceedings, land values had *already* witnessed, in the words of the Minister as quoted above, "phenomenal increases". It was, of course, *a fortiori*, the case at the time the land was acquired *and*, *a fortiori* the case *since the time of acquisition*. The passage quoted in the preceding paragraph speaks, in many ways, for itself and is, in equally many ways, a succinct summary of what I have already stated in somewhat more detail above.

67 In the circumstances, and viewing the present proceedings from the perspective of *the*

plaintiff, it is *even clearer* that the application concerned has *no merit whatsoever*.

Conclusion

68 In summary, it was clear that the present application was clearly (indeed, woefully) out of time and, on that ground alone, it must be dismissed.

69 I also hold that the plaintiff had not, in any event, satisfied the standard of proof required for the granting of leave.

70 In the circumstances, therefore, I dismissed the application with costs.

[note: 1] See notes of evidence ("NE") at p 2.

[note: 2] See NE at pp 5 and 9.

[note: 3] See NE at p 5.

[note: 4] See *ibid*.

[note: 5] See NE at p 7.

[note: 6] See NE at pp 10-11.