

Collector of Land Revenue v Mustaq Ahmad s/o Mustafa
[2002] SGCA 14

Case Number : CA 600100/2001
Decision Date : 06 March 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : Tan Hee Joek (State Counsel) for the appellant; Mirza Namazie and Tan Teng Muan (Mallal & Namazie) for the respondent
Parties : Collector of Land Revenue — Mustaq Ahmad s/o Mustafa

Land – Compulsory acquisitions – Compensation – Appeal from decision of Land Acquisition Appeals Board – Whether Appeals Board correct to take into account provisional permission to amend development plans in awarding compensation – s 33(5)(e) Land Acquisition Act (Cap 152)

Judgment

GROUNDS OF DECISION

1. This case involves an appeal against the decision of the Appeals Board on a question of law under section 29(2) of the Land Acquisition Act (Cap 152). The appellant, the Collector of Land Revenue, (the "Collector") appealed against an award of \$5,640,000 made by the Appeals Board in favour of the respondent, Mr Mustaq Ahmad ("Mustaq"), as compensation for the acquisition of his properties on the ground that the decision is contrary to the provisions of section 33(5)(e) of the Land Acquisition Act. We allowed the appeal with costs and now give the reasons for our decision.

Background

2. Mustaq owned No 38 and No 40 Owen Road ("the properties"), which were acquired on 28 June 1996 for a public purpose, namely the construction of the North-East MRT Line and the comprehensive development of the area.

3. For a more complete picture of the dispute between the parties, the following ought to be noted:

(a) The acquired properties had a total area of 475 square metres and were located in a local shopping zone in the Master Plan.

(b) On 7 September 1993, written permission was granted by the competent authority for the development of the site and for a "3-storey and an attic residential building with a restaurant at the 1st storey".

(c) Construction work, which began in July 1994, was suspended in June 1995 following an application by the architect to amend the written permission by adding a 4th storey and by converting the residential building to a boarding house.

(d) Provisional permission for the amendments was obtained on 18 July 1995. The provisional permission was valid for a period of 6 months from 27 July 1995.

(e) No written permission was obtained for the amendments to add a 4th storey and to convert the residential building to a boarding house and by the time the properties were acquired in June 1998, the provisional permission to increase the size of the building and to convert its use had lapsed.

4. After the acquisition of his properties, Mustaq made a claim for \$7,107,500 as compensation for the said acquisition. On 11 September 1996, the Collector of Land Revenue (the "Collector") awarded him the sum of \$3,300,000. On 3 November 1996, Mustaq submitted a revised claim for \$5,850,000, which included a claim for \$4,500,000 in respect of the land.

5. The Appeals Board ruled that the market value of the acquired properties was \$5,640,000. In coming to this conclusion, it took into account the fact that Mustaq had obtained provisional permission to increase the size of the building and to convert the residential building to a boarding house. The Board took this approach because it accepted that "the probable use of the acquired land for the purpose of determining its market value is use for a restaurant on the 1st storey and a boarding house on the upper storeys in a building with 4 storeys and an attic as proposed in the appellant's application for an amendment to the original development proposal and for which provisional permission had been granted." A discount was given because the provisional permission had lapsed by the time the properties were acquired.

6. The Collector, who disagreed with the approach of the Appeals Board, appealed against its decision.

The appeal

7. The main issue in the appeal was whether or not the Appeals Board acted in contravention of section 33(5)(e) of the Land Acquisition Act by taking into account the provisional permission for the purpose of awarding Mustaq compensation for the acquisition of his properties.

8. Section 33(5)(e) of the Land Acquisition Act provides as follows:

[T]he market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the Master Plan, whichever is the lower, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other more intensive use.

9. The Collector pointed out that by taking into account the provisional permission, the Appeals Board departed from the principles laid down by a previous Appeals Board in *Beauty Park Development (Pte) Ltd v Collector of Land Revenue* [1991] 2 MLJ li. In that case, two and half acres of land in Bukit Timah were acquired by the Urban Renewal Authority. Prior to the acquisition, the owners' architect had prepared plans for a 27-storey commercial and residential complex and had applied to the authorities for planning permission. After corresponding with the relevant authorities, the architect met an officer in the Planning Department, who advised him to amend the plans to provide for the construction of a 20-storey complex, with 60% of the building allocated for residential purposes. Although no written permission had been obtained for the proposed amendments, the owners of the acquired property, who made a claim for \$16.5m, asserted that as planning permission could

reasonably have been expected to be granted for the multi-storey shopping and residential complex, this should be taken into account for the purpose of determining the market value of the property. However, the Collector awarded the owners only \$631,000. This sum was increased to \$1,832,484 before the hearing of the appeal against the Collector's award. The Appeals Board noted that the main issue before it was whether or not the property should have been valued with the benefit of the planning permission that the appellants alleged that they would have obtained but for the acquisition of their property by the Urban Renewal Authority. The Board accepted that the owners had in their hands what may be termed "in principle" approval for their plans to redevelop the acquired site. However, it did not think that the "in principle" approval should be taken into account for determining the compensation payable to the owners. Sinnathuray J, who delivered the decision of the Appeals Board, said at pp *liv-iv* as follows:

There was evidence before the Board that at all material times, all that the appellants could be said to have got from the Planning Department at the very most was an 'in principle approval' of their plans. This however, did not necessarily mean that a final approval would have been granted to them.

Although it was said that it was reasonable then to expect that planning permission would have been granted to the appellants when they had amended their plans according to the directives given by the officer from the Planning Department, it is a wholly different thing to say that it was certain that they would have been granted such planning permission...

10. We are of the view that the approach adopted by the Appeals Board in *Beauty Park Development (Pte) Ltd v Collector of Land Revenue* is correct. The provisional approval granted to Mustaq cannot be equated with written permission to develop the site. If provisional permission for a proposed plan is to be taken into account for the purpose of determining the market value of an acquired property, it will be necessary to evaluate whether or not it is likely that written permission will eventually be granted after the submission of building plans, and whether or not the written permission may include restrictions, which have to be taken into account. Such speculation is unnecessary and undesirable.

11. We thus remitted the case back to the Appeals Board for the compensation payable to Mustaq to be computed on the basis of the written permission granted for the development of the acquired properties.

Sgd:

YONG PUNG HOW
Chief Justice

Sgd:

CHAO HICK TIN
Judge of Appeal

Sgd:

TAN LEE MENG

Judge

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