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[2024] HKLdT 95

### IN THE LANDS TRIBUNAL OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

### LAND COMPULSORY SALE MAIN APPLICATION NO 5000 OF 2023

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BETWEEN

|  |  |
| --- | --- |
| SUNNY PALACE LIMITED (朗殿有限公司) | 1st Applicant |
| DYNAMIC SUMMIT LIMITED (沛峰有限公司) | 2nd Applicant |
| MARWIN INVESTMENT LIMITED  (明榮投資有限公司) | 3rd Applicant |

|  |  |
| --- | --- |
| and |  |
| LOK TIN SANG (駱天生) | 1st Respondent  (Discontinued) |
| LOK TIN KEI (駱天基) | 2nd Respondent  (Discontinued) |
| LOK TIN YIN (駱天賢) | 3rd Respondent  (Discontinued) |
| LOK TIN ON (駱天安) | 4th Respondent  (Discontinued) |
| CHEUNG LAI LING RITA (張麗玲) | 5th Respondent |
| THE PERSONAL REPRESENTATIVE OF THE ESTATE OF LATE SOO YEE LEE (李素如) | 6th Respondent |

Before: Mr Alex Ng, Member of the Lands Tribunal

Date of Trial: 25 November 2024

Date of Judgment: 9 December 2024

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JUDGMENT

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***Background***

1. This is the applicants’ application for an order for sale, for the purposes of redevelopment under the Land (Compulsory Sale for Redevelopment) Ordinance, Cap 545 (“the Ordinance”), of all the undivided shares of and in the Remaining Portion of Sub-Section 4 of Section M of Kowloon Marine Lot No 28 (the Lot”) together with a building erected thereon known as Nos 24, 26, 28 and 30 Fuk Chak Street, Kowloon (“the Building”).
2. The Building comprises two 6-storey adjoining blocks, and each block is served by a common staircase. An occupation permit No K90/64 was issued for the Building on 19 February 1964, granting permission to occupy its ground floor as 4 shops for non-domestic use and its 1st floor to 5th floor as 8 tenement rooms per floor for domestic use. According to the approved building plans, there are 2 shops planned on the ground floor and 4 flats planned on each of the 1st to 5th floors of each block.
3. The Lot together with the Building standing thereon is allocated with 48 undivided shares. Each of the 4 shops on ground floor is given 2 undivided shares and each of the 20 flats on upper floors is given 1 undivided share, making up a total of 48 undivided shares.

***SECTION 3 OF THE ORDINANCE – OWNERSHIP OF THE APPLICANTs***

1. The applicants filed a Notice of Application (“NOA’) on 26 October 2023. At the time of filing of the NOA, there were 6 respondents and the applicants owned 45 over 48 (i.e. 93.75%) undivided shares in the Lot.
2. Section 3(1) of the Ordinance prescribes that the minimum percentage of undivided shares that an applicant or applicants should possess before making an application under the Ordinance is 90%.
3. I am satisfied that as at the date of application, the applicants owned more than 90% of the undivided shares in the Lot. I am therefore satisfied the applicants are entitled to make the present application under section 3 of the Ordinance.

***The Remaining Respondents***

1. After the filing of the NOA, the applicants acquired Ground Floor of No 24 Fuk Chak Street (“R1-R4 Property) owned by the 1st, 2nd, 3rd and 4th respondents, and have discontinued the proceedings against them.
2. By the purchase of the R1-R4 Property owned by the 1st, 2nd, 3rd and 4th respondents, the applicants become the 97.92% (i.e. 47 over 48 undivided shares) owner of the Lot.
3. The 6th respondent, who is the registered owner of Rear Portion on 2nd Floor of No 24 Fuk Chak Street (“R5/R6 Property), is a missing owner in these proceedings. Substituted service of the application on the 6th respondent was effected on 10 January 2024 pursuant to the Order of the tribunal dated 22 December 2023. The 6th respondent had not shown up after the expiration of the 21-day period as specified in the notices.
4. The 5th respondent was declared by the Order dated 25 February 2019 in DCCJ 41/2018 to hold the possessory title over the R5/R6 Property by adverse possession. At the hearing on 23 September 2024, upon the confirmation and undertaking by the 5th respondent not to take any issue and not to seek any relief in these proceedings, leave be granted by the tribunal to dispense with attendance of the 5th respondent at trial.

***Issues for Determination by the Tribunal***

1. The remaining issues to be decided in this case are as follows:
   1. What was the respective market value of each property in the Building as at 2 August 2023, the valuation date adopted in the application valuation report dated 18 October 2023, as assessed in accordance with Part 1 of Schedule 1 of the Ordinance?
   2. Whether the redevelopment of the Lot is justified due to age and/or state of repair of the Building in accordance with section 4(2)(a) of the Ordinance?
   3. Whether the applicants have taken reasonable steps to acquire all the undivided shares in the Lot on terms that are fair and reasonable in accordance with section 4(2)(b) of the Ordinance?
   4. If an order for sale should be granted, what should be the reserve price for the purpose of auction sale?

***Determination of the market value of each property in the Building***

1. Pursuant to section 4(1)(a)(i) of the Ordinance, if there is a dispute between the parties on the market value of the properties as assessed in the application, the tribunal shall determine the proper value. Section 4(1)(a)(ii) further provides that, in the case of any minority owner of the lot who cannot be found, the majority owner of the lot is required to satisfy the tribunal that the value of the minority owner’s property as assessed in the application is: -

*“(A) not less than fair and reasonable; and*

*(B) not less than fair and reasonable when compared with the value of the majority owner’s property as assessed in the application.”*

1. While the 5th respondent has withdrawn her opposition, the 6th respondent is missing in these proceedings.
2. The applicants rely on the reports and valuations of Mr Alnwick Chan Chi Hing (“Mr Chan”) of Knight Frank Petty Limited. Mr Chan prepared the application valuation report on 18 October 2023, which assessed the market value of all properties in the Building as at 2 August 2023 in accordance with Part 1 of Schedule 1 of the Ordinance. He subsequently prepared a supplemental report on 16 May 2024, which reviewed the market value as initially assessed by him.
3. In the application valuation report, Mr Chan adopted direct comparison method to assess the market value of each property in the Building. In the supplemental report, Mr Chan assessed the reference shop unit (i.e. Ground Floor of No 28 Fuk Chak Street) at $280,000 per square meter saleable and the reference domestic unit (i.e. Front Portion on 3rd Floor of No 28 Fuk Chak Street) at $98,000 per square meter saleable. He had then compared the reference units with the other properties in the Building.
4. In the absence of contrary evidence, I accept the market value of each property in the Building as assessed by Mr Chan. I am satisfied that the value of the R5/R6 Property is not less than fair and reasonable and not less than fair and reasonable when compared with the value of the applicants’ properties.
5. The market value of each property in the Building as at the relevant date of valuation, i.e. 2 August 2023, are appended below: -

|  |  |  |  |
| --- | --- | --- | --- |
| *Street No* | *Floor* | *Portion* | *Market Value* |
| 24 Fuk Chak Street | Ground | - | $31,417,109 |
| 24 Fuk Chak Street | 1st | Front | $4,448,973 |
| 24 Fuk Chak Street | 1st | Rear | $3,515,599 |
| 24 Fuk Chak Street | 2nd | Front | $4,182,199 |
| 24 Fuk Chak Street | 2nd | Rear | $3,473,713 |
| 24 Fuk Chak Street | 3rd | Front | $4,099,340 |
| 24 Fuk Chak Street | 3rd | Rear | $3,340,237 |
| 24 Fuk Chak Street | 4th | Front | $4,103,701 |
| 24 Fuk Chak Street | 4th | Rear | $3,140,023 |
| 24 Fuk Chak Street | 5th | Front | $4,317,941 |
| 24 Fuk Chak Street | 5th | Rear | $3,402,840 |
| 26 Fuk Chak Street | Ground | - | $33,376,448 |
| 26 Fuk Chak Street | 1st | Front | $4,359,636 |
| 26 Fuk Chak Street | 1st | Rear | $3,515,599 |
| 26 Fuk Chak Street | 2nd | Front | $4,182,199 |
| 26 Fuk Chak Street | 2nd | Rear | $3,473,713 |
| 26 Fuk Chak Street | 3rd | Front | $4,361,000 |
| 26 Fuk Chak Street | 3rd | Rear | $3,406,975 |
| 26 Fuk Chak Street | 4th | Front | $4,103,701 |
| 26 Fuk Chak Street | 4th | Rear | $3,206,761 |
| 26 Fuk Chak Street | 5th | Front | $4,311,815 |
| 26 Fuk Chak Street | 5th | Rear | $3,402,840 |
| 28 Fuk Chak Street | Ground | - | $31,354,400 |
| 28 Fuk Chak Street | 1st | Front | $4,636,580 |
| 28 Fuk Chak Street | 1st | Rear | $3,741,956 |
| 28 Fuk Chak Street | 2nd | Front | $4,535,440 |
| 28 Fuk Chak Street | 2nd | Rear | $3,266,825 |
| 28 Fuk Chak Street | 3rd | Front | $4,361,000 |
| 28 Fuk Chak Street | 3rd | Rear | $3,406,975 |
| 28 Fuk Chak Street | 4th | Front | $4,273,780 |
| 28 Fuk Chak Street | 4th | Rear | $3,340,237 |
| 28 Fuk Chak Street | 5th | Front | $4,409,812 |
| 28 Fuk Chak Street | 5th | Rear | $3,402,840 |
| 30 Fuk Chak Street | Ground | - | $33,310,682 |
| 30 Fuk Chak Street | 1st | Front | $4,681,248 |
| 30 Fuk Chak Street | 1st | Rear | $3,515,599 |
| 30 Fuk Chak Street | 2nd | Front | $4,221,448 |
| 30 Fuk Chak Street | 2nd | Rear | $3,473,713 |
| 30 Fuk Chak Street | 3rd | Front | $4,404,610 |
| 30 Fuk Chak Street | 3rd | Rear | $3,203,424 |
| 30 Fuk Chak Street | 4th | Front | $4,317,390 |
| 30 Fuk Chak Street | 4th | Rear | $3,406,975 |
| 30 Fuk Chak Street | 5th | Front | $4,355,271 |
| 30 Fuk Chak Street | 5th | Rear | $3,402,840 |
|  |  |  |  |
|  |  | Total | $284,165,407 |

1. I accept the total market value of the Building is $284,165,407.

***SECTION 4(2) OF THE ORDINANCE - JUSTIFICATION AND REASONABLE STEPS***

1. Section 4(2) of the Ordinance provides as follows: -

*“2. The Tribunal shall not make an order for sale unless, after hearing the objections, if any, of the minority owners of the lot the subject of the application under section 3(1) concerned, the Tribunal is satisfied that—*

*(a) the redevelopment of the lot is justified (and whether or not the majority owner proposes to or is capable of undertaking the redevelopment)—*

*(i) due to the age or state of repair of the existing development on the lot; or*

*(ii) on 1 or more grounds, if any, specified in regulations made under section 12; and*

*(b) the majority owner has taken reasonable steps to acquire all the undivided shares in the lot (including, in the case of a minority owner whose whereabouts are known, negotiating for the purchase of such of those shares as are owned by that minority owner on terms that are fair and reasonable).”*

1. The applicants must satisfy this tribunal the above statutory requirements are met; otherwise, an order for compulsory sale would not be granted.

*Whether development of the Lot is justified due to the age and/or state of repair of the Building*

1. The applicants adduce expert evidence of Mr Dennis Wong Wing Cheung (“Mr Wong”), both a structural engineer and a building surveyor, of Prudential Surveyors International Limited. Mr Wong prepared a Structural Survey Report and a Condition Survey Report both dated 16 May 2024.
2. No expert evidence has been adduced to rebut the reports complied by Mr Wong.
3. Having considered the reports of Mr Wong, I accept his expert opinion. The Building, being erected of more than 60 years ago, is in poor condition and has come to the end of its design working life. The design of the Building has become obsolete over time in many aspects, both physically and functionally, and fail to conform to modern safety standards and statutory requirements.
4. I am also of the view the Building is in poor state of repair and the costs of repair to bring the Building to a tenantable standard is disproportionate to the costs for reconstructing a new similar building. Even if repair works are carried out, such works will bring about a modest improvement only to the existing condition of the Building and the Building will continue remain a sub-standard one.
5. By reason of the matters set out above, I am satisfied the redevelopment of the Building is justified.

*Whether the applicants have taken reasonable steps*

1. Mr Adrian But (“Mr But’), counsel for the applicants, submits that: -
   1. the applicants have successfully acquired the R1-R4 Property owned by the 1st, 2nd, 3rd and 4th respondents before trial;
   2. the 5th respondent has withdrawn her opposition before trial; and
   3. the 6th respondent, who holds the paper title only of the R5/R6 Property, is a missing owner with substituted service of the application, and the applicants have in fact tried to reach out to the 6th respondent by *inter alia* letter dated 6 October 2023 by offering to purchase its interest but to no avail.
2. Based on the above evidence, Mr But further submits that the applicants have taken reasonable steps to acquire all the undivided shares in the Lot. I agree.
3. By reason of the matters set out above, I am satisfied the applicants have taken reasonable steps to acquire all the undivided shares in the Lot.

***Redevelopment value of the lot as at 31 october 2024***

1. By reason of being satisfied that redevelopment of the Lot is justified and that the applicants have taken reasonable steps to acquire all the undivided shares in the Lot, I am satisfied an order for sale should be granted in favour of the applicants.
2. In the valuation report dated 16 May 2024 and the supplemental report dated 11 November 2024, Mr Chan assessed the redevelopment value (“RDV”) of the Lot (i.e. a Class A site of 520.25 square meters) as at 31 October 2024 by residual method. He proposed to build a 25-storey commercial/residential composite building at the plot ratio of 8.335 (i.e. non-domestic plot ratio of 0.7178 and domestic plot ratio of 7.6172) and the total gross floor area of 4,336.27 square meters (i.e. excluding exempted green features). The hypothetical development would comprise retail units, plant room and domestic entrance lobby on ground floor; clubhouse and plant room on 1st floor; and 92 residential units from 2nd to 24th floors.
3. In the supplemental report dated 11 November 2024, Mr Chan updated his residual valuation and assessed the gross development value (“GDV”) of the hypothetical development at $711,291,050 (i.e. average ground floor retail unit rate at $275,000 per square meter saleable and average domestic unit rate at $202,176 per square meter saleable). He adopted (i) demolition cost at $2,208 per square meter gross; (ii) construction cost at $47,036 per square meter gross; (iii) development period of 3 years (i.e. demolition period of 9 months, construction period of 2.5 years, and there are 3 months overlapping period); (iv) marketing cost at 4% of the GDV; (v) professional fees at 6% of development costs; (vi) interest rate at 5.375% per annum; and (vii) developer’s profit at 17% (i.e. with additional allowance for stamp duty at 4.25% and legal cost at 0.1% on residual land value). Finally, he assessed the RDV of the Lot at $286,000,000 (i.e. accommodation value of $65,955 per square meter / $6,127 per square foot)
4. Having gone through Mr Chan’s assessments in his valuation report and supplemental report, I accept his residual valuation. Although I may not agree with him each and every item in his valuation, I am of the opinion that the overall result is fair and reasonable and reflects the market value of the Lot as at the valuation date.
5. Based on the residual valuation of Mr Chan and my above determination, the Lot as at 31 October 2024 is assessed at $286,000,000, which should be the reserve price for the purpose of auction sale.

***Orders***

1. I have set out the reasons why I am satisfied an order for sale should be granted, and I therefore make the following orders: -
   1. All the undivided shares in the Lot, the subject of the application, be sold by way of public auction for the purposes of redevelopment of the Lot;
   2. Mr Anthony Chow Wing Kin and Ms Anna Chow Suk Han, nominated by the applicants, be appointed the trustees (“the Trustees”) to discharge the duties imposed on them as trustees by the Ordinance in relation to the sale of the Lot;
   3. The Trustees be authorized to charge such remuneration for their services in accordance with the terms set out in the letter of Messrs Guantao & Chow dated 17 October 2024;
   4. For the purposes of the sale of the Lot by public auction: -
      1. the sale of the Lot be on the particulars and conditions of sale the same or substantially the same as those set out in the draft Particulars and Conditions of Sale to be approved and initialed by the tribunal; and
      2. the reserve price for the Lot be set at $286,000,000;
   5. The expenses of the auction and the proceeds of sale of the Lot be apportioned in accordance with section 10 and Part 3 of Schedule 1 of the Ordinance;
   6. Subject to further extension(s) that the tribunal may subsequently allow upon the application of the purchaser of the Lot or its successor in title, the redevelopment of the Lot and the Building shall be completed and made fit for occupation within a period of 6 years after the date on which the purchaser of the Lot becomes the owner of the Lot;
   7. Service of the Order of sale on the 6th respondent be dispensed with;
   8. The applicants do publish notices once in a Chinese newspaper (and in the Chinese language) and once in an English newspaper (and in the English language) circulating generally in Hong Kong within 7 days from the date of the sealed judgment informing the 6th respondent and all persons claiming to be the owners of the Lot: -
      1. that the tribunal has made an Order for sale of the Lot;
      2. that the Lot be sold by public auction; and
      3. where and the times during which a copy of the Order for sale can be obtained;
   9. Liberty to the applicants, the respondents, the Trustees and the purchaser of the Lot or its successors in title to apply to the tribunal for further directions under the Ordinance.

***Costs***

1. I make a costs order *nisi* that there be no order as to costs. Unless any parties apply by summons to vary, the costs order *nisi* shall be made absolute upon expiry of 14 days from the date of this judgment.

|  |  |
| --- | --- |
|  | (Alex Ng)  Member  Lands Tribunal |
|  |  |

Mr Adrian But, instructed by So, Lung & Associates, for the applicants

The attendance of the 5th respondent, represented by Ma Tang & Co, be excused

The 6th respondent was not represented and did not appear