

IN THE APPEALS BOARD (LAND ACQUISITION) SINGAPORE

Appeal No. AB 2018.005

In the Matter of Compulsory Acquisition of Lot
809M Mukim 12

Between

RIGOH FISHERY PTE LTD

... Appellant

And

**THE COLLECTOR OF
LAND REVENUE**

... Respondent

DECISION

Tan Joo Seng and Ignatius Lee (M/s Tyto LLC) for the Appellant
Ho Lian-Yi, Lee Hui Min, Kenneth Mak, and Vanessa Lam (Attorney-
General's Chambers) for the Respondent

The decision of the Board is:

- (a) That the award of the Collector of Land Revenue of compensation in the sum of \$3,602,000.00 in respect of Lot 809M Mukim 12 at No. 21 Murai Farmway Singapore 709144 be confirmed; and
- (b) That the appeal be dismissed with costs to the Respondent to be taxed if not agreed.

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Introduction

1 This matter concerns the compulsory acquisition of Lot 809M Mukim 12 at No. 21 Murai Farmway Singapore 709144 (“Acquired Land”) that was leased to the appellant Rigoh Fishery Pte Ltd (“Appellant”). The Appellant submitted a claim of \$8,561,500.00 on 27 March 2018. On 23 August 2018, the respondent Collector of Land Revenue (“Collector”, or interchangeably “Respondent”) issued an award of \$3,046,799.00 as compensation. On 21 October 2020 after considering a supplementary report by the Appellant’s engaged valuer, the Collector revised the compensation award upwards to \$3,602,000.00. The Appellant was dissatisfied with the award and appealed.

2 The hearing for the appeal took place over five days on 20 to 23 February 2023 and 27 February 2023. Having considered the facts of the case and the submissions by the Parties, the decision of the Board is to dismiss the appeal with costs to the Respondent to be taxed if not agreed. Our reasons for dismissing the appeal are set forth herein.

Background Facts and Acquisition

3 The Acquired Land is 11,670.2 square metres in area and is zoned in the URA Master Plan as “Agriculture”.¹ The Acquired Land was leased by the State to the Appellant for a term of 20 years commencing 31 October 1990, and subsequently extended for a further term of 20 years commencing 31 October 2010.²

¹ S/n 1 List of Undisputed Facts.

² S/n 2 List of Undisputed Facts.

4 In 1991, the Appellant established a family-run business in the farming of ornamental fish. The Appellant used the Acquired Land as a fish farm.³ The Appellant is owned and operated by Mr Goh Teng Hong (“Mr Goh”), his wife, and his daughter.⁴

5 By Notification No. 1884 dated 4 July 2017 first published in the Government Gazette, Electronic Edition on 18 July 2017, the Acquired Land was declared as required for a public purpose, namely the expansion of Tengah Airbase.⁵ On the same day (“Date of Acquisition”), a notice was served on the Appellant to inform it that the Acquired Land had been gazetted for acquisition by the Government.⁶ As at the Date of Acquisition, there was approximately 13 years remaining on the Appellant’s lease of the Acquired Land.⁷ On the Acquired Land was an office and showroom, a dwelling house, fish sheds, and other site improvements such as concrete fishponds, concrete water holding tanks, retaining wall, and drainage system, *etc.* (collectively referred to as the “Buildings and Site Improvements”).⁸

6 On 16 January 2020, the Collector took legal possession of the Acquired Land.⁹ Upon the Appellant’s requests, the Acquired Land was rented back to the Appellant for free for the first year of tenancy and subsequently at 1/3 of the market rent amounting to \$1,580.00 per month until the State took physical possession of the Acquired Land on 31 May 2021.¹⁰

³ S/n 7 List of Undisputed Facts.

⁴ Page 20 of Mr Goh’s 2nd AEIC.

⁵ S/n 4 List of Undisputed Facts.

⁶ S/n 5 List of Undisputed Facts.

⁷ S/n 6 List of Undisputed Facts.

⁸ S/n 8 List of Undisputed Facts.

⁹ S/n 16 List of Undisputed Facts.

¹⁰ S/n 16 and s/n 23 List of Undisputed Facts.

7 The Appellant eventually moved its business to a sub-lot available in Malaysian Feedmills Farms Pte Ltd at Neo Tiew Lane 1 (“MFF Land”). The date of this move is unclear; sometime between 2019 and 2020.

Award, Appeal, and Upward Revision

8 On 27 March 2018, the Appellant submitted a claim of \$8,561,500.00 (“Original Claim”) as compensation for the Acquired Land based on, amongst others, a valuation report prepared by Robert Khan & Co Pte Ltd (“Robert Khan Pte Ltd”) dated 5 March 2018.¹¹ This comprised:

- (a) \$8,503,000.00, being the Appellant’s valuation of the Acquired Land and the Buildings and Site Improvements as at the Date of Acquisition on a ‘reinstatement with new’ basis (“Original Reinstatement With New Valuation”);
- (b) \$37,500.00, being the Appellant’s claim for relocation costs; and
- (c) \$21,000.00, being the Appellant’s claim for the loss of fruit trees.

9 On 23 August 2018, the Collector issued an award of \$3,046,799.00 (“Collector’s Initial Award”) as compensation.¹² This comprised:

- (a) \$3,041,799.00 for the market value of the Acquired Land and the Buildings and Site Improvements, including \$15,799.00 for the fruit trees; and
- (b) \$5,000.00 for relocation costs.

¹¹ S/n 9 List of Undisputed Facts; pages 14 – 49 of Mr Khan’s AEIC.

¹² S/n 10 List of Undisputed Facts.

10 Dissatisfied with the Collector's Award, the Appellant filed a Notice of Appeal on 20 September 2018.¹³ Around May / June 2019, the Appellant handed to the Collector a Statement of his estimated gross business expenses in view of the business disruption amounting to \$22,751,724.68 ("Additional Compensation Claim").¹⁴ By way of his affidavit of evidence-in-chief ("AEIC") affirmed on 8 July 2020, Mr Goh averred that there should be equitable compensation in the manner of a sum that would put the Appellant's fish farm in the same position as it had been at the Date of Acquisition. The Additional Compensation Claim comprised:

- (a) \$560,169.00 for the costs of requisition of new land;
- (b) \$8,152,527.00 for the costs of re-building infrastructure;
- (c) \$13,242,028.08 for the loss of water for 13 years;
- (d) \$72,000.00 for the loss delay without land to house staff;
- (e) \$360,000.00 for the loss delay without land to store equipment;
and
- (f) \$360,000.00 for the loss delay without land to maintain two key staff.

11 The Collector issued his Grounds of Award on 22 November 2019.¹⁵ On 24 December 2019, the Appellant filed a Petition of Appeal for an increase in compensation to the same amount sought in the Original Claim, *i.e.* \$8,561,500.00.¹⁶

¹³ S/n 11 List of Undisputed Facts.

¹⁴ S/n 13 List of Undisputed Facts; AB-202 to AB-203.

¹⁵ S/n 14 List of Undisputed Facts; AB-206 to AB-249.

¹⁶ S/n 15 List of Undisputed Facts; AB-342 to AB-348.

Upward Revision of Award

12 On 8 July 2020, the Appellant’s engaged valuer Mr Robert Khan Yeow Wai (“Mr Khan”) affirmed an AEIC exhibiting a supplementary report dated 6 July 2020 that provided the following:¹⁷

(a) A revised valuation of the Acquired Land on a ‘reinstatement with new’ basis of \$7,832,000.00 (“Revised Reinstatement With New Valuation”); and

(b) A valuation of \$3,602,000.00 of the Acquired Land on a market value basis according to section 33(5)(e) of the Land Acquisition Act 1966 (“LAA”), which took into account depreciation of the Buildings and Site Improvements on the Acquired Land and the remaining tenure of the lease of the Acquired Land (“Robert Khan Pte Ltd’s Market Value Valuation”).

13 Notwithstanding that the Collector’s valuer Mr Png Poh Soon (“Mr Png”) formed the view that the market value of the Acquired Land was \$3,026,000.00, the Collector accepted Robert Khan Pte Ltd’s Market Value Valuation and revised his award upwards to \$3,602,000.00 (“Collector’s Revised Award”) on 21 October 2020.¹⁸ The Collector did not accept the Appellant’s Revised Reinstatement With New Valuation and the Additional Compensation Claim.

Further Compensation Sought

14 In his 2nd AEIC affirmed on 22 March 2022, Mr Goh alleged that he would incur a total estimated sum of \$1,800,000.00 to restart his fishery

¹⁷ S/n 18 List of Undisputed Facts; pages 51 – 93 of Mr Khan’s AEIC.

¹⁸ S/n 22 List of Undisputed Facts.

business at a land area of 2,895 m². In the Collector's reply AEIC affirmed on 25 April 2022, the Collector rejected the claim for the further compensation sought.

Payments to the Appellant

15 On 26 October 2018, the Collector made an advance payment of \$1,221,719.60, being part of the Collector's Initial Award of \$3,046,799.00 to the Appellant.¹⁹ The balance of \$1,756,675.59 was paid on 16 January 2020 when the Collector took legal possession of the Acquired Land.²⁰

16 Following the Collector's Revised Award to \$3,602,000.00, the Collector paid additional compensation of \$605,636.38 (including interest of \$29,636.38) to the Appellant on 24 November 2020.²¹

Overview of the Parties' Cases

17 The Appellant broadly advances the position that the award is inadequate and not reflective of the market value of the Acquired Land.²² The Appellant submitted that the Collector did not take into account and/or did not give appropriate weight to all relevant factors when making the award. Materially, the Appellant submitted that the Collector erroneously failed to adopt the 'reinstatement with new' basis of valuation for the Acquired Land.²³ The Collector robustly rejected the Appellant's case and submitted that the Appellant failed to prove any of its claims in the appeal and failed to discharge its burden of proof to show that the sums awarded were inadequate.

¹⁹ S/n 12 List of Undisputed Facts.

²⁰ S/n 16 and s/n 17 List of Undisputed Facts.

²¹ S/n 22 List of Undisputed Facts.

²² AB-343 to AB-348.

²³ Paragraph 2 of the Appellant's Closing Submissions.

18 We will deal with the specific arguments advanced by the Parties in the context of the issues in turn.

19 A total of six witnesses were called to give evidence for the Parties' respective cases:

For the Appellant

- (a) Mr Goh;
- (b) Mr Khan, a professional valuer and chartered surveyor in both Plant & Machinery and Real Estate engaged by Mr Goh and the Appellant;²⁴
- (c) Mr Seah Kwee Yong ("Mr Seah"), a professional quantity surveyor engaged by Robert Khan Pte Ltd.²⁵

For the Collector

- (d) Mr Wang Zhenxu Gavin ("Mr Wang"), the Collector in charge of the compulsory acquisition of the Acquired Land under the LAA.
- (e) Mr Png Poh Soon ("Mr Png"), a qualified real estate valuer that was engaged in his previous employment by the Collector.²⁶
- (f) Mr Yeo Ek Seng ("Mr Yeo"), a quantity surveyor engaged by Mr Png's previous employer.²⁷

²⁴ Paragraphs 2 – 3 of Mr Khan's AEIC.

²⁵ Paragraph 3 of Mr Seah's AEIC.

²⁶ Paragraphs 1 – 3 of Mr Png's 1st AEIC.

²⁷ Paragraph 1 of Mr Yeo's AEIC.

Decision

Applicable Law & Legal Principles

20 At the outset, we have to point out that the claim to be considered is limited by the Original Claim submitted by the Appellant pursuant to the notice under section 8(1) of the LAA (*i.e.* \$8,561,500.00; see [8] above).²⁸ The Appellant also accepts that the maximum amount of compensation that it may be awarded in the appeal is the amount of compensation it initially claimed pursuant to the notice under section 8(1) of the LAA.²⁹ Accordingly, even if the Appellant succeeds in its case – *i.e.* persuading this Board on its basis of valuation, the Additional Compensation Claim (see [10] above), and/or the further compensation sought (see [14] above) – the Appellant’s amount of compensation on appeal cannot exceed the Original Claim.

21 Pursuant to section 33(1) and (5) of the LAA and taking into account the issues adjudicated in this appeal, the Board is to take into consideration the following matters and no others in determining the amount of compensation to be awarded for the Acquired Land:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board must take into consideration the following matters and no others:

(a) where the date of acquisition of the land is on or after 12 February 2007, the market value of the acquired land

—

...

(ii) as at the date of the publication of the declaration made under section 5, in any other case;

...

²⁸ Section 35(1) of the LAA.

²⁹ Paragraph 142 of the Appellant’s Closing Submissions.

(d) the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting the person's other property, whether movable or immovable, in any other manner;

(e) if, in consequence of the acquisition, the person interested is compelled to change the person's residence or place of business, the reasonable expenses (if any) incidental to that change;

...

(5) For the purposes of subsection (1)(a) or (1A)(a)

(e) the market value of the acquired land is deemed not to exceed the price which a bona fide purchaser might reasonably be willing to pay, after taking into account the zoning and density requirements and any other restrictions imposed by or under the Planning Act 1998 as at the date of acquisition and any restrictive covenants in the title of the acquired land, and no account is to be taken of any potential value of the land for any other use more intensive than that permitted by or under the Planning Act 1998 as at the date of acquisition.

22 It follows from the above that if any of the Appellant's claims do not fall within the categories provided in section 33(1) of the LAA, the claim is not compensable and must be disallowed. See *Ng Boo Tan v Collector of Land Revenue* [2002] 2 SL(R) 633. In the event that the Appellant proves that its claims are compensable, the Board should not interfere with differences in small amounts between the Appellant's claim and an award, as valuation is not an exact science. See *Dr Chee Bee Tian and Another v The Collector of Land Revenue* [1981] SGAB 4.

23 The onus of proving that an award is inadequate is on the Appellant. See section 25(3) of the LAA. In other words, the Appellant bears the burden of proof in the appeal.

Market Value of the Acquired Land in respect of sections 33(1) and (5) of the LAA

Undisputed Market Value based on the Comparable & Cost Method

24 On 27 March 2018, the Appellant submitted its Original Claim of \$8,561,500.00, primarily focused on the \$8,503,000.00 value assessed on the Original Reinstatement With New Valuation. The Collector did not accept this. Instead, the Collector preferred the \$3,041,799.00 value set out by its own engaged valuer based on the comparable & cost method. Subsequently, the Appellant's engaged valuer Mr Khan exhibited a supplementary report in his AEIC that computed the market value based on the comparable & cost method to be \$3,602,000.00. The Collector accepted this and consequently revised his award upwards. Consequently, for the purposes of this appeal, it is undisputed that the market value of the Acquired Land based on the comparable & cost method is \$3,602,000.00.³⁰

Whether "Reinstatement with New" is the Correct Basis of Valuation to be Adopted for the Acquired Land

25 The main thrust of the appeal is whether the reinstatement with new method ought to be preferred to the comparable & cost method as the basis of compensation for the Acquired Land pursuant to section 33(1)(a) of the LAA. It is essential to emphasise that *both* of the Parties' engaged valuers were on *common ground that the comparable & cost method is the appropriate method of valuation for the Acquired Land*. It is only Mr Goh and Mr Seah (the Appellant's expert witness, a quantity surveyor engaged by Robert Khan Pte Ltd) that took the view that the reinstatement with new basis would be the correct basis. The reinstatement with new method refers to the cost necessary to

³⁰ Pages 16 – 18 paragraphs 17 – 22 of the Collector's Closing Submissions.

replace, repair or rebuild a property to a condition substantially the same as, but not better or more extensive than, its condition when new.

26 The Appellant submitted that the comparable & cost method does not reflect the market value of the Acquired Land.³¹ The Appellant argued that the disruption caused to the Appellant's business as a result of the acquisition was significant and the comparable & cost method premised on the depreciated value of the asset is insufficient to compensate the Appellant's estimated expenses to start its business afresh.

27 The Appellant emphasised that it had to cease its business activities, source for a new location, re-build the necessary infrastructure and re-start its fish farming business. Interestingly, the Appellant also submitted that there was no basis for the Collector to object to the reinstatement with new method since there is a possibility that the price a bona fide purchaser may be willing to pay for an asset may not always be equal to the depreciated value of an asset.³² Such a purchaser may be prepared to pay a higher value if they were keen to acquire the fish farm, with the Appellant's alleged water reticulation system, and to continue using the Acquired Land as a fish farm. Mr Goh explained that Appellant's alleged water reticulation system can result in massive savings in water bills:³³

5 Peculiarity of existing Site

[The Appellant] pointed out that the existing Site is peculiar to his fish farming due to its terrain where the raw land had a slope towards the river stream from a height of 3 to 4 metre. It was originally a waterlogged marshy slopping land.

³¹ Pages 9 – 11 paragraphs 20 – 26 of the Appellant's Closing Submissions.

³² Pages 12 – 15 paragraphs 27 – 38 of the Appellant's Closing Submissions.

³³ Mr Goh's 1st AEIC at 128.

It also happens to have the ground water springing from the higher land which can be reclaimed for irrigation onto his fish tank aquarium.

The incoming spring ground water integrated with the ground level differential creates a natural eco-environment for the circulation and filtration of water over all fishponds, without the use of treated PUB portable water which would be chemically harmful.

28 The Collector submitted that the reinstatement with new method of valuation is neither an appropriate basis of valuation for the purposes of the LAA nor provides the market value of the Acquired Land since it is primarily the cost necessary to replace, repair or rebuild the property to a condition substantially the same as, but not better or more extensive than, its condition when new.³⁴ The reinstatement with new value method disregards the remaining length of the Appellant's lease as at the Date of Acquisition and the remaining shelf-life of the Buildings and Site Improvements on the Acquired Land. As a result, the reinstatement with new valuation greatly exceeds the market value of the Acquired Land and what a bona fide purchaser would reasonably be willing to pay for the Acquired Land (including buildings and site improvements), contrary to section 33(5)(e) of the LAA.

29 The narrow issue before this Board is whether the Appellant satisfied its burden of proving that the Collector erred in assessing the market value of the Acquired Land based on the comparable & cost method. We find that the Appellant's submissions to be without merit and agree with the Collector's submissions that the reinstatement with new basis method does not reflect the market value of the Acquired Land. We note the emotive case put forward by the Appellant and acknowledge Mr Goh's passionate plea that the amount of compensation awarded was, in his view, inadequate. His views however did not

³⁴ Pages 19 – 28 paragraphs 25 – 43 of the Collector's Closing Submissions.

possess any legitimate legal basis and could not satisfy the Appellant's burden of proving that the Collector's Revised Award is inadequate.

30 The core plank of the Appellant's case was that the reinstatement with new method was a more appropriate basis in assessing the market value because the comparable & cost method was insufficient to compensate the Appellant's estimated expenses to procure a new land of the same size and to erect, equivalent new fish farming facilities thereon. The Appellant's own valuer Mr Khan was of the opinion that the comparable & cost method is the appropriate method of valuation for the Acquired Land. It is only Mr Goh and Mr Seah who took a contrary view. We find that the Collector did not err in assessing the market value of the Acquired Land based on the comparable & cost method because he correctly took into account the depreciated value of the Acquired Land. The Appellant's case simply cannot be sustained because that is not the objective of the compensation award under the LAA – the compensation is in respect of the Acquired Land and *not for the costs for an affected party to (re)start its business afresh*. We attributed no weight to Mr Seah's evidence as he lacked the objectivity expected of an expert witness.³⁵ The Appellant's submissions and case passionately argued about the inadequacy of the compensation award vis-à-vis the disruption and losses to its business. Critically, these lacked any legitimate basis as to why the comparable & cost method was inherently wrong or wrong in the circumstances of this case, considering the objective of the LAA.

31 Further, we note the Appellant's reliance on the Collector's alleged unsubstantiated assumption that a bona fide purchaser would not be willing to pay more than the depreciated value of the Acquired Land. The Appellant's premise in doing so was part of its broader submission in respect of

³⁵ See pages 75 – 79 paragraphs 142 – 152 of the Collector's Closing Submissions.

section 33(5)(e) of the LAA wherein the bona fide purchaser might be reasonably be willing to pay a price that exceeds the market value.³⁶ We find such a premise and submission to be unhelpful to the Appellant in the circumstances of this case. The Appellant has not produced any evidence that a purchaser would pay a price assessed on the replacement with new basis, where the buildings and improvements on the site were not new, and were built years ago. Even if one assumes the possibility of such a purchaser contemplated by the Appellant, it does not necessarily mean that the market value, and in turn, the compensation is to be *ipso facto* adjusted upwards. In the scenario envisioned by the Appellant, the higher price offered by the purchaser would merely *deem the upper limit* to the assessed market value as required by section 33(5)(e) of the LAA. It does not mean that the market value will be deemed to be higher. If Parliament intended this to be so, the LAA would have stipulated ‘deemed to be the price which a bona fide purchaser might reasonably be willing to pay’ [emphasis added] as opposed to the current stipulation of ‘deemed not to exceed’. Accordingly, section 33(5)(e) of the LAA does not benefit claimants where the market value of the acquired land is lower than the price which a bona fide purchaser might reasonably be willing to pay.

Compensation in respect of section 33(1)(d) of the LAA

Damage to Property

32 The Appellant submitted that the damage that it has suffered is the cost necessary to replace or rebuild its buildings.³⁷ Its premise was that those Buildings and Site Improvements can no longer be used by it following the acquisition since they will be demolished. Accordingly, the Appellant sought compensation of \$7,474,000.00 under section 33(1)(d) of the LAA. The

³⁶ See also page 5 – 6 of the Appellant’s Reply Submissions.

³⁷ Pages 21 – 22 paragraphs 57 – 61 of the Appellant’s Closing Submissions.

Collector rejected this Appellant's claim because the Acquired Land included the Buildings attached to it and therefore would not fall within the definition of 'other property' under section 33(1)(d) of the LAA.

33 We find the Appellant's submissions to be wholly without merit and unprincipled. In section 33(1)(d) of the LAA, the Board must take into consideration the damage (if any) sustained by the claimant injuriously affecting the person's '*other property*' [emphasis added]. The Appellant accordingly submitted that the applicable 'other property' was the Buildings and Site Improvements. This cannot be correct because the market value³⁸ of the Acquired Land *included* the value of the Buildings and Site Improvements. Allowing the Appellant's claim under section 33(1)(d) of the LAA in respect of the Buildings and Site Improvements would result in double compensation. Further, as a matter of fundamental legal principle and consistent with the definition of 'land' in section 2(1) of the LAA, the Buildings and Site Improvements were attached to the Acquired Land and therefore does not constitute property that is capable of falling within the scope of 'other property'.

Claim for Fruit Trees

34 The Appellant claimed \$21,000.00 for 231 fruit trees of 11 types that were injuriously affected by the acquisition.³⁹ This was based on Robert Khan Pte Ltd's first report dated 5 March 2018 wherein an overall estimate was given.⁴⁰ The Collector awarded compensation of \$15,799.00 in respect of the fruit trees. The Collector obtained quotations for the respective types of trees

³⁸ To be exact, it was the Robert Khan Pte Ltd's Market Value Valuation, on which the Collector's Revised Award was based on.

³⁹ Pages 22 – 23 paragraphs 62 – 69 of the Appellant's Closing Submissions; page 8 paragraphs 22 – 23 of the Appellant's Reply Submissions.

⁴⁰ Page 28 of Mr Khan's AEIC.

from three suppliers, compared the unit rate of each tree from the three suppliers against the unit rate provided by Robert Khan Pte Ltd, and thereafter proceeded to award the cost of each tree based on the lowest quotation.⁴¹ The thrust of the Appellant's case on appeal was that the quantum of compensation *could* amount to \$27,745.00 based on the rates obtained by the Collector.⁴²

35 We agreed with the Collector's submissions that the Appellant failed to show how the compensation awarded by the Collector for the fruit trees is inadequate because no evidence whatsoever has been produced by the Appellant.⁴³ The quantities and type of fruit trees that were injuriously affected by the acquisition were not in dispute. This included the characterisation of whether a particular tree was a small or a big tree, and there was no dispute on the unit rate to be adopted for all small trees. The dispute was on the unit rate adopted for eight types of big trees; the Appellant adopted the highest quotation whilst the Collector adopted the lowest quotation. The Collector's methodology was reasonable and without error. In contrast, had the Appellant's methodology been adopted, it would be akin to the Appellant selecting and paying his suppliers based on the highest quoted price alone. This would be contrary to any common or business sense. In any event, the Appellant failed to prove or argue why the highest quoted unit rate ought to be preferred.

⁴¹ Pages 13 – 14 paragraphs 29 – 30 of Mr Wang's 1st AEIC.

⁴² Exhibit A-4.

⁴³ Pages 28 – 29 paragraphs 44 – 48 of the Collector's Closing Submissions.

Compensation in respect of section 33(1)(e) of the LAA

Claim for Business Relocation Expenses

36 The Appellant sought compensation for the following expenses (“Business Relocation Expenses”) that it considered incidental to the change in its place of business:⁴⁴

S/No	Details	Amount
1	Cost of requisition of new land for 13 + 3 years	\$560,169.00
2	Cost of rebuilding infrastructure	\$8,157,527.00
3	Loss of water for 13 years	\$13,242,028.08
4	Loss delay without land to house staff	\$72,000.00
5	Loss delay without land to store equipment	\$77,700.00
6	Loss delay without land to maintain two key staff	\$133,200.00
7	Transport costs	\$37,500.00
		\$22,280,124.08

37 According to the Appellant, these heads of claim were either incurred or would have to be incurred because of the acquisition because, (a) there was a causal connection between the acquisition and the loss, (b) the loss was not too

⁴⁴ Pages 23 – 24 paragraph 70 – 71 of the Appellant’s Closing Submissions.

remote, and (c) the loss was on which a reasonable person in the position of the claimant would have incurred.⁴⁵ The Appellant cited the Privy Council decision in *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111 [*“Shun Fung Ironworks”*] in support.⁴⁶

38 The Collector submitted that there is no legal basis to compensate the Appellant for the purported Business Relocation Expenses under the LAA as they amounted to business losses that are not compensable under the Act.⁴⁷ The Collector argued that the Appellant’s reliance on *Shun Fung Ironworks* was misplaced since that case was decided on the basis of a different statutory framework. Further, assuming that the purported expenses were compensable, the Collector submitted that the Appellant did not discharge its burden of proving that it has or would be likely to incur these expenses, or that these expenses are reasonable.⁴⁸

(1) Cost of Requisition of New Land and Cost of Rebuilding Infrastructure

39 In our view, the cost of requisition of new land and the cost of rebuilding infrastructure are not compensable under section 33(1)(e) of the LAA. We disagree with the Appellant’s submissions on these issues.⁴⁹ Pursuant to section 33(1)(e) of the LAA, the Board must take into account reasonable expenses that are *incidental* to the *change* in the place of business of the person interested when determining the amount of compensation to be awarded. The purported expenses do not fall within such a scope because they are not

⁴⁵ Page 27 paragraph 80 of the Appellant’s Closing Submissions.

⁴⁶ Pages 25 – 26 paragraphs 75 – 77 of the Appellant’s Closing Submissions.

⁴⁷ Pages 36 – 43 paragraphs 59 – 73 of the Collector’s Closing Submissions.

⁴⁸ Pages 44 – 45 paragraphs 74 – 77 of the Collector’s Closing Submissions.

⁴⁹ Pages 28 – 32 paragraphs 83 – 97 of the Appellant’s Closing Submissions.

incidental expenses by nature. We agree with the Collector's submissions,⁵⁰ especially that the cost of requisition of new land and the cost of rebuilding infrastructure were instead capital expenditure relating to the Appellant's *decision* to continue its fish farming business at a different location after the acquisition. See *Lau Huai Eng v Collector of Land Revenue* AB 2001.088 at [14] and *Ng Boo Tan v Collector of Land Revenue* AB 1999.069 at [32]. Such a view is consistent with the Appellant's submissions that it must procure new land to *resume* its fish farming business and building equivalent infrastructure to *continue* its business.⁵¹

(2) Loss of Water

40 The Appellant sought compensation for expenses totalling \$13,242,028.08 in respect of an estimated loss of water for 13 years that it alleged to be incidental to the change of its place of business.⁵² These are estimated additional expense that the Appellant purportedly must incur because of the loss of use of spring water found at the Acquired Land. According to Mr Goh, the Appellant had invented an innovative water reticulation system to take advantage of the spring water and the sloping contour of the Acquired Land. This resulted in substantial savings in the Appellant's water bills. If the Appellant had remained on the Acquired Land until the end of the 20-year lease, it would have continued to enjoy the savings for another 13 years.

41 The Collector submitted that the Appellant has neither a legal basis for such a claim, nor proven that this is a sum which the Appellant is likely to

⁵⁰ Pages 54 – 58 paragraphs 94 – 99 of the Collector's Closing Submissions.

⁵¹ Page 28 paragraphs 83 – 84 and page 30 paragraph 92 of the Appellant's Closing Submissions.

⁵² Pages 32 – 34 paragraphs 98 – 104 of the Appellant's Closing Submissions.

incur.⁵³ At best, such expenses are an increase in costs affecting the Appellant's actual earnings, which are not compensable under the LAA. On the facts of this case, the Collector also submitted that the supposed ground spring water claimed by the Appellant appears merely to be rainwater which flows through the soil and into the Appellant's well. Accordingly, such a feature does not *prima facie* appear to be unique to the Acquired Land.

42 We find that the loss of water claimed by the Appellant is not compensable under section 33(1)(e) of the LAA. Taking the Appellant's case at its highest (*i.e.* that there is such a unique feature), it will simply mean that the Appellant's cost of doing business has increased. Such a cost is not an expense that is *incidental* to the *change* of the Appellant's place of business, but the resulting costs to be incurred following the change. Materially, such costs relate to the Appellant's loss of earnings and are therefore not compensable under the LAA. It is well established that claims for business loss are not compensable under the LAA. In 1973, section 33(1)(d) of the LAA was amended to remove the reference to damage to "his actual earnings" as a compensable claim. Such an intention was made expressly clear by the then Minister for Law, Professor S. Jayakumar, during the Second Reading of the Land Acquisition (Amendment) Bill 2007 that it is not the policy or intention of the LAA to compensate for business loss or loss of goodwill.⁵⁴

43 Under the LAA, a claim for loss of earnings is not compensable, regardless of whether the loss arises from a decrease in revenues or an increase in costs. Critically, in *HMS Far East Pte Ltd v Collector of Land Revenue* AB 2011.113 [*"HMS Far East"*] at [30] and [31],⁵⁵ the Board rejected the argument

⁵³ Pages 58 – 61 paragraphs 100 – 105 of the Collector's Closing Submissions.

⁵⁴ Page 181 of the Respondent's Bundle of Authorities, at column 525.

⁵⁵ Page 67 of the Respondent's Bundle of Authorities.

that the 1973 amendments to the Land Acquisition Act only sought to disallow claims for compensation based on reduced revenues but not claims for compensation based on increased costs. It was rejected because the LAA was amended to remove the term ‘actual earnings’, which term must mean the substantive earnings after taking into account revenues less costs. To this end, we agree with the Collector that the Appellant’s reliance on *Shun Fung Ironworks* was misplaced because that decision was based entirely on the different statutory framework of the Hong Kong Crown Lands Resumption Ordinance wherein compensation takes into account the amount of loss to a business.⁵⁶

(3) Loss Delay Without Land

44 The Appellant made three claims in respect of the loss delay without land: (a) to house staff, (b) to store equipment, and (c) to maintain two key staff. We will first deal with the two claims in respect of the staff.

(A) HOUSE AND MAINTAIN STAFF

45 The Appellant sought compensation of \$72,000.00 to rent a Housing and Development Board flat, calculated at \$2,000.00 per month for three years.⁵⁷ The Appellant explained that since Mr Goh and his wife were provided accommodation while the Appellant operated from the Acquired Land, this head of claim was the estimated costs to provide accommodation for the Appellant’s directors on a temporary basis before the Appellant could complete the intended redevelopment of its new fish farm on a new plot of land.

⁵⁶ Pages 42 – 43 paragraph 72 of the Respondent’s Closing Submissions.

⁵⁷ Pages 34 – 36 paragraphs 105 – 109 of the Appellant’s Closing Submissions.

46 The Appellant similarly sought compensation of \$133,200.00 for the combined monthly salary of two “key staff” at \$3,700.00 per month for a period of three years.⁵⁸ The staff referred to was Mr Goh (\$2,000.00 per month) and his wife (\$1,700.00 per month) and the Appellant explained that it would not be able to find new land and to re-construct the buildings on the new land immediately after the Acquisition. It would take about three years before the Appellant can re-start its business operations. Pending the resumption of business, it would have to incur incidental expenses such as the salaries of its employees.

47 The Collector’s main submission in respect of both claims was that they constitute business losses that are not compensable under the LAA.⁵⁹ Further, assuming if they were, the Collector submitted that the Appellant failed in its burden of proof.

48 We agree with the Collector’s submissions that the claims to house and maintain staff are not compensable under the Act and that our views articulated above at [42] – [43] in respect of the claim for loss of water equally apply. In the context of staff costs, it would be even clearer that such claims are not compensable. In *HMS Far East*, the Board at [31] arrived at the view that staff costs are not compensable under the LAA as such items relate to and affect actual earnings.

⁵⁸ Pages 38 – 39 paragraphs 118 – 123 of the Appellant’s Closing Submissions. The Appellant’s initial claim was for \$360,000.00, comprising \$5,000.00 per month for Mr Goh and his wife each for a period of 36 months. See page 136 of Mr Goh’s 1st AEIC at page 24 of the Appellant’s Closing Submissions. Following the hearing, this claim was lowered to \$133,200.00; see page 39 paragraphs 121 – 123 of the Appellant’s Closing Submissions.

⁵⁹ Pages 61 – 64 paragraphs 106 – 115 and pages 69 – 70 paragraphs 126 – 130 of the Collector’s Closing Submissions.

(B) STORAGE OF EQUIPMENT

49 The Appellant sought compensation of \$77,700.00 for expenses it incurred for the storage of equipment and/or items pending its full resumption of business at the MFF Land.⁶⁰ The amount comprised the following:

(a) From 1 January 2021 up to 31 May 2021, the Appellant had to pay rental to the Singapore Land Authority to remain at the Acquired Land at \$4,740.00 per month. This totalled \$23,700.00; and

(b) From May 2020, the Appellant paid \$2,000.00 per month to use the MFF Land. The amount incurred from May 2020 up to August 2022, when the infrastructure for the Appellant's location was expected to be ready, totalled \$54,000.00.

50 To avoid doubt, the Appellant initially sought compensation of \$360,000.00 for warehouse rental of \$10,000.00 per month for three years. The Appellant explained that this was on the premise that it would not be able to find new land and to re-construct the buildings on the new land immediately after the acquisition. Since it would take the Appellant about three years to fully re-start its business operations, it would have to store its equipment somewhere and will have to incur costs in doing so. Departing from the initial claim, the Appellant informed the Board that it did not store its equipment at a warehouse but started moving items to its new place of business at the MFF Land sometime around August 2019. The process of moving the equipment to the MFF Land took a long time because the Appellant faced a problem procuring labour due to the COVID-19 pandemic. According to Mr Goh, the moving out process started in August 2019 and was only completed in June 2021. Mr Goh said that he had

⁶⁰ Pages 36 – 38 paragraphs 110 – 117 of the Appellant's Closing Submissions.

also rented land from his friend for temporary storage of equipment, but he did not include this in the Appellant's claim.

51 The Collector rejected the Appellant's compensation claims in respect of any rental for the storage of equipment.⁶¹ The Collector argued that the Appellant did not adduce any documentary evidence, invoices, or receipts to show that it incurred any warehouse or storage costs for any period, let alone three years, to store any items due to the acquisition. In any event, since it is undisputed that the Appellant remained on the Acquired Land up until 1 June 2021, it was unnecessary for the Appellant to rent a warehouse or storage.

52 There are two parts to the Appellant's revised claim, and we shall first deal with the Appellant's rental to remain on the Acquired Land. We found this claim to be rather curious since this cannot by any logic be said to constitute expenses that are incidental to a change in the Appellant's place of business since such rental was incurred for the *lack* of a change, *i.e.* the failure to move out of the Acquired Land. It would be particularly curious for the Government to reimburse the Appellant for remaining on the Acquired Land due to the Appellant's own inaction, in respect of rental that it charges the Appellant.

53 We now turn to the second part of the Appellant's revised claim in respect of the rental to use the MFF Land. We agree with the Collector that the Appellant has not proven that it incurred the stipulated *rent* as a matter of fact.⁶² This was the Appellant's burden to do so. There were no documents adduced in support. There was no signed agreement, and the draft agreement did not

⁶¹ Pages 64 – 69 paragraphs 116 – 125 of the Collector's Closing Submissions; pages 18 – 20 paragraphs 30 – 34 of the Collector's Reply Submissions.

⁶² Pages 50 – 54 paragraphs 87 – 93 of the Collector's Closing Submissions.

concern *storage* expenses or costs. The Appellant woefully fell short of its burden.

(4) Transport Cost

54 The Collector awarded \$5,000.00 to the Appellant for relocation costs. The Appellant sought compensation of \$37,500.00 instead and submitted that the Collector had no basis for the allegedly low compensation.⁶³ The \$37,500.00 was based on the rate for lorry crane transport of 10 trips per house at \$250.00 per trip with labour cost of approximately 20 manpower at \$100.00 per day for 10 days. Mr Khan arrived at these assumptions after interviewing Mr Goh.⁶⁴ The Collector's case for \$5,000.00 was based on his assessment of what was reasonable in light of past cases.⁶⁵ He was however prepared to reimburse the Appellant for any additional relocation costs incurred, provided that the Appellant furnished proper evidence. No further evidence to date has been furnished. Further, the Collector submitted that several of the items allegedly moved by the Appellant from the Acquired Land were items for which the Appellant had claimed compensation as part of the Buildings and Site Improvements.

55 We found the Appellant's case speculative on a balance of probabilities and any failure to obtain a higher compensation in respect of transport costs lies solely with the Appellant. The burden of proof lies with the Appellant as to why the \$5,000.00 awarded by the Collector is inadequate, but it must be considered in the context that the Collector was ready to extend additional compensation on a reimbursement basis. We are unable to arrive at a view that this approach

⁶³ Pages 39 – 42 paragraphs 123 – 133 of the Appellant's Closing Submissions.

⁶⁴ Page 28 of Mr Khan's AEIC.

⁶⁵ Pages 30 – 36 paragraphs 49 – 58 of the Respondent's Closing Submissions.

is unreasonable. Further, we are persuaded by the Collector's submissions that some of the items transported comprised items which formed part of the compensation award by way of fixtures to the land. Allowing such a claim would be tantamount to granting the Appellant double recovery.

Timeline of Payments

56 The Appellant urged the Board to decide on whether the due date for payment of the compensation awarded by the Collector should be the Date of the Acquisition, *i.e.* 18 July 2017. The Collector submitted that this is not a matter over which the Board has jurisdiction. We agree with the Collector. The Board is a creature of statute and there are no provisions under the LAA that empowers the Board to consider such an issue.

Conclusion

57 In light of the above, we confirm the award of \$3,602,000.00 in respect of the Acquired Land. We therefore dismiss the appeal with costs to the Collector to be taxed if not agreed.

Dated 1 November 2023

Deputy Commissioner of Appeals Darryl Soh
Assessor Mr Leung Yew Kwong
Assessor Professor Florence Ling Yean Yng