LAND ACQUISITION ACT

APPEALS BOARD

AB 2011.113

In the Matter of the Acquisition of
Lot 1965V part Mukim 7
at 12 Tuas Road Singapore 638486

Between

M/s HMS Far East Pte Ltd

... Appellants

And

Collector of Land Revenue

... Respondent

Mr Paul Wong for Appellants
Mr Khoo Boo Jin for Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of $15,870 in respect of land at Lot 1965V part Mukim 7 at 12 Tuas Road Singapore 638486 and the award of $20,930 as compensation for the loss of 8 car park lots, 14 palm trees, 3 fruit trees and 10 planter boxes (inclusive of shrubs and flowering) be confirmed;

And

(2) That the costs of this appeal to the Board be paid by the appellants.

Introduction

1. This is an appeal by a company, a sublessee of Jurong Town Corporation ("JTC") industrial land ("Appellant company") against: a) the compensation of $15,870 awarded by the Collector of Land Revenue ("the Collector") for the part-lot acquisition of Lot 1965V MK 7, also known as 12 Tuas Road ("the Property") under the Land Acquisition Act (Cap 152),("the Act"); and b) the compensation amount of $20,930 for the loss of 8 car park lots, 14 palm trees, 3 fruit trees and 10 planter boxes (inclusive of shrubs and flowering).

2. The issues are: a) the appropriate method for assessing the compensation payable to the Appellant company, whether the claim be for the market value of the acquired land under sections 33(1)(a) read with 33(5)(e) of the Act or in the alternative, for "the damage sustained …. by reason of the acquisition injuriously affecting .." the Appellant company's remaining land under section 33(1)(d) of the Act or by severance under section 33(1)(c); b) whether the Appellant company have proved their claim for $980,000 for compensation relating to the acquired land; c) whether the Appellant company's claims of $913,662 for loss of 14 palm trees, turfing and designed landscape (shrubs and flowering) and projected expenses for an additional cleaner, additional security guard services, maintenance of security closed circuit television services and erecting an auto-barrier for the car park, are compensable under section 33(1)(c) or (d) of the Act; and d) if the claims are compensable, whether the Appellant company have proved their claim of $913,662 as losses, costs and expenses suffered or reasonably to be incurred as a result of the land acquisition.

3 *Acquisition Date and Purpose* - The land, which was acquired ("acquired land") was gazetted for land acquisition under the Act on 11 January 2011 ("acquisition date") for the public purpose of (i) the construction of the Tuas West Mass Transit (MRT) Extension; and (ii) road works along the Pan Island Expressway, Tuas Road, Pioneer Road, Tuas West Road, Tuas West Drive and Tuas South Avenue 3.

4. *Appellant, their business and the Property* – The appellant is HMS Far East Pte Ltd, a ship supplier providing services in the international shipping and maritime industry, including supplies and catering to ships with storage facilities for frozen and chilled goods, dry provisions, technical stores, offshore equipment, safety and security equipment, bonded goods, ship spare parts and other valuable goods. The business is operational 24/7 with about 25 trucks moving in and out of the Property for delivery to ships and about 90 supplier trucks moving in and out daily. The Appellant Company has an industrial storage facility, a purpose built detached building, standing on the Property. The Property, with a land area of 12,758.1square metre ("sqm") and built up to a developed plot ratio of 0.66, has an approved development plot ratio of 1.4.

5. *The Acquired Land* - The acquired land is a rectangular strip of area 841.8 sqm (6.6% of the Property) running 150 metres along the front boundary of the Property adjoining Tuas Road, extending for a depth of up to 5.6 metres into the Property. Urban Redevelopment Authority's ("URA") guidelines specify a minimum road buffer within which lies a green buffer. About 53% of the acquired land fell within the green buffer. The following were on the acquired land - a part of a plastered wall, chain link fencing, 3 flag poles, turfing, a guardhouse cum bin centre, part of the tarmac driveway, a motorised sliding gate, a pedestrian gate, 41 car parking lots, 14 palm trees and 3 fruit trees.

6. *Reinstatement by the Land Transport Authority and Collector's Award* - It is not disputed that after Collector took possession of the land, the Land Transport Authority ("the LTA") spent $731,564.35 building a new guardhouse at the new entrance and new exit (with a closed circuit television ("CCTV"), Public Announcement ("PA"), fire alarm systems and related civil and electrical works), two sliding gates, boundary wall, external drains, flag pole footing, lighting, footpath, 5 planter boxes, 33 carpark lots, pedestrian gate (including the card access systems, CCTV systems and HMS signage) and relocating the PUB water meter chamber and undertaking sanitary works. Collector awarded $12,130 for the 8 car park lots, 14 palm trees and 3 fruit trees and $8,800 for 10 planter boxes, all of which were not reinstated.

7. *Relevant details of the Sublease for the Property (including the acquired land)* - JTC holds a 99 year lease granted by the State for the Property. JTC had subleased the Property to Hitachi Koki (Singapore) Pte Ltd ("Hitachi") for 30 years from 1 November 1990 to 31 October 2020, with an option to renew for another 30 years, provided that on expiry, there were no sublease breaches. Hitachi did not pay an upfront land premium to JTC for the 30 year sublease. They paid an annual land rent in monthly instalments to JTC, based on the total land area of the Property. The annual land rent was subject to yearly reviews with a ceiling on the increase fixed at 5.5% of the immediate preceding year's rent.[1] If the sublease was renewed, the new annual land rent payable to JTC would be set at the JTC market rate as at renewal date. On 8 January 2010, the Appellant Company bought Hitachi's sublease interest in the Property with the industrial facility and ancillary facilities thereon for $6,950,000.00. They said that they had made improvements to the Property (building and open areas) for their business costing $7,124,956.98. As at acquisition date, the remainder sublease term was 9 years, 9 months and 20 days or about 9.8 years ("remainder sublease term") and the JTC annual land rent was $13.06 per sqm.

Relevant Provisions of the Act

8. The relevant provisions of the Act, section 33, subsections (1)(a), (c) and (d) and (5)(e), are as follows:

[1] QKW1 -26

Section 33(1) –

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

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

Section 33(1) (c) and (d) –

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

……………………

(c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing that land from his other land;

(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 his other property, whether movable or immovable, or in any other manner;

Section 33(5)(e) –

(5) For the purpose of subsection (1) (a) –

…………………………………………………

(e) the market value of the acquired land shall be 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 under the Planning Act (Cap 232) as at the date of acquisition and any restrictive covenants in the title of the acquired land ….."

9. *Onus and Standard of Proof -* Under section 25(3) of the Act, the Appellant Company has the onus of proving on a balance of probabilities that the Collector's award is inadequate.[2] Case law has recognised that an appellant in a land acquisition case is analogous to a plaintiff.

10. The first part of this judgement deals with the method of valuation and the compensation payable to the Appellant Company for the land acquisition. The second part deals with whether the amounts claimed by the Appellant company under section 33(1)(c) and (d) of the Act as losses, costs and expenses arising out of the acquisition, are compensable.

[2] Assistant Development Officer, Bombay v Tayaballi AIR 1933 BOM 361 at 365, Chuah Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur [1967] 2 MLJ 99 at pg 101.

Issue

11. The issue is: should the acquired land be valued or the damage be assessed:

    a) *On the Collector's basis that the acquired land* is a strip of land as described in paragraphs 5 to 7 herein and comprised in a JTC sublease with a remainder term of 9.8 years as at acquisition date; or

    b) *On Appellant company's basis:* that using the "before and after acquisition" valuation method "used in conjunction with the comparison method incorporating the residual method" based on the highest and best use of the Property at a maximum development plot ratio of 1.4 and applied to a sublease term of 39.81 years, the compensation award, whether it be the market value of the acquired land under sections 33(1)(a) read with 33(5)(e) or the damage by reason of the acquisition injuriously affecting the remaining Property under section 33(1)(d) or the damage by severance under section 33(1)(c) should take into account the value of the loss of the potential Gross Floor Area ("GFA") or potential Gross Internal Area ("GIA") consequent upon acquisition, for which they should be compensated. Before acquisition, the Property (including the 841.8sqm acquired land) with an area of 12,758.1 sqm and with an existing plot ratio of 0.66, could have been redeveloped or built up to a maximum GFA of 17,861.34sqm based on the maximum development plot ratio of 1.4 under Masterplan 2008. With the loss of the acquired land, the potential maximum GFA had been reduced by 1,178.52sqm.

12. *Common Valuation Methods* - The common methods of valuation stated in the Singapore Institute of Surveyor and Valuers ("SISV), Valuation Standards and Guidelines (2000) for properties are the Comparison Method, the Cost Method, the Income Method, the Residual Method and the Profits Method[3]. A brief outline of SISV's description of the first 4 methods, referred to by parties' valuers, is below:

    a) *Comparison Method* - this can be used for valuations, where there is adequate market transactions of properties, which bear a close relationship to the values of the subject property, to provide an indication of value. The approach is to find properties that are transacted in the current market and resemble the subject property and to make appropriate adjustments to reflect the differences between them;
    b) *Income Method* – this is used to estimate the present worth of the rights to future benefits to be derived from the ownership of a specific interest in a specific property under given market conditions. In property valuation, these rights are often expressed as future income in the form of the prevailing and sustainable rent;
    c) *Cost Method* – this is based on the rationale that the value of a subject property comprises two components: the value of improvements and the value of land. It is appropriate in the valuation of properties with little or no market transactions, such as schools and shipyards. The value of the site as if it were vacant is estimated by

[3] Tab 1, RBR1 – pgs 5-6.

using the comparison method. The amount of depreciation or obsolescence is then estimated and deducted from the cost of improvements to arrive at the depreciated replacement or reproduction costs. This is then added to the land value to produce the capital value of the subject property; and

d) *Residual Method* – this may be used for the valuation of the following types of property: a) A vacant or undeveloped site where planning permission for development has been, or is likely to be, obtained; b) A property with an existing building which has the potential to be upgraded via a change of use or general improvements; c) A property with an existing building, which has no economic value and where planning permission has been, or is likely to be granted for its demolition and replacement. In all three cases, if direct comparables can be obtained, a valuation by comparison would be appropriate. The approach is to estimate the gross development value of the property which is the capital value of the developed or improved site. What remains after the deduction of all costs incurred in the development or improvement is the residual value, which includes the value of the bare site or of the site or building, where the building is to be improved or demolished. This method, even when properly used, is considered to be highly subjective and "unsatisfactory and unreliable" and "susceptible to misuse and manipulation in such a manner as to produce a desired or preconceived result." [4]

13. *Valuers and Method of Valuation* – As agreed by parties, their valuers gave evidence through "expert witness conferencing." The Collector's main valuer, Quek Kay Wee ("QKW"), used the Income Method or Income Capitalisation Method to value the acquired land. The Appellant company's main valuer, Ms Kwang Heng Lee ("KHL"), used what she called: the "Before and After Acquisition" Method of Valuation "used in conjunction with Comparison Method incorporating Residual Method".

14. *Collector's Valuer's Method of Valuation* - QKW used the Income Method or income Capitalisation Method to value the acquired land based on the profit rent, which was the difference between the sublease annual land rent payable to JTC by the Appellant company and the annual market land rent as at acquisition date, capitalised over the period that the Appellant company would enjoy the profit rent.[5] He cited some text authorities to support his approach.

15. *QKW's use of the Income Method* - Using the JTC annual land rent of $13.06 psm paid by the Appellant company as at acquisition date and the actual JTC posted annual land rent of $15.66 psm (market land rent) at the same date for lands west of Tuas Road with a plot ratio of 1.4, QKW arrived at a $2.60 psm difference, which he multiplied by 841.8sqm (area of acquired land) to arrive at a profit rent of $2,189 per annum. He capitalised this sum over the remainder sublease term of 9.8 years at 6% to arrive at

[4] Khublall at pg 154 RBOA Tab 8
[5] Quek1 pp 7 para 10

$15,870, which Collector submits is the compensation payable. QKW was of the view that it was not appropriate to calculate the profit rent for a new 30 year sublease, if renewed, because: a) there would be no profit rent then, as JTC would, upon start of any new 30 year sublease, charge the then JTC posted annual land rent (market rate)[6], thereby ruling out any profit rent, at the start of the renewed sublease; b) although JTC had confirmed that the Appellant company had met the investment condition for a 30 year renewal, it was indeterminate if the Appellant company would actually renew the sublease, due to breach of covenants in the sublease or otherwise; and c) that there would, in any case, be no issue of profit rent for the acquired land, as the acquired land would then no longer form part of Property to be subleased, upon renewal in October 2020.

16. QKW's evidence was that he had applied the Income Method to about 20 part-lot acquisitions[7] and this method was accepted and appropriate. Because of the plot shape, size and length of the frontage of the remaining Property after acquisition, severance of the acquired land from the Property would have a negligible effect on the value of the remaining Property and no further compensation was warranted. Industrialists, when buying JTC properties for industrial use, pay for the actual GFA of an industrial facility as that was income generating. The industrial storage facility was not affected by acquisition. Despite the loss of the peripheral acquired land, the Appellant Company could clearly still carry out their business and they could also be regarded as having made some savings as they would not have to pay annual land rent for the acquired land for the remainder sublease.

17. His view was that the Sales Comparison Method was not suitable as there was a dearth of sales transactions for small narrow strips of industrial land next to a road, there being no demand for such land. The Residual Method was also not suitable as the acquired land could not be developed independently, it was within the green and road buffers and there were sublease usage restrictions on use of open land.

18. *Appellant Company's arguments against the Income Method* – The Appellant Company submits that the Income method is only appropriate where there are "prevailing and sustainable" rents that can be maintained at a certain level over a period of time. Even if the market rent was rightly set at JTC's posted annual land rate, which was disputed, JTC land rates fluctuated and were not predictable, hence QKW could not assume that rental rates would be prevailing and sustainable. The JTC market land rent had increased in 2012 relative to 2011 and 2010. The profit rent valuation method could not be used to value the acquired land because there were no sustainable rental rates to form the basis for its valuation. The Appellant Company's argument is incorrect, as it would make all future estimates unsustainable. The method, in referring to the

[6] Tab 1, RBR1 –pg 18 at 4.3.3.1
[7] NE 21 Jan 2014 21:22:24

"prevailing and sustainable rents," referred to the rents prevailing at the relevant time, which in the instant case, was the acquisition date, provided that such rents could be reasonably regarded as sustainable over the remaining sublease period.

19. The Appellant Company also submitted that Collector could not, on the one hand, assert that the acquired land, being a strip of land with a green buffer, had no development potential, and yet use the Income Method to assert that the acquired land could be regarded as income generating and could earn the same rental profits as the rest of the land comprised in the Property. This would seem to stem from a misunderstanding of the use of the Income Method. It was not disputed that the annual land rent psm due to JTC was for all the land comprised in the Property, including the acquired land.

20. *Alleged Premium over JTC posted land rent* - The Appellant Company, in their Closing Submission, say that the use of JTC's posted annual land rent as the market rate was unrealistic and failed to recognise the market premium paid in the secondary market over and above JTC's posted land rent. KHL's evidence was that from November 2011 to August 2012, JTC's tender of vacant industrial land sites in Tuas South locality had attracted tendered bids, that were higher than JTC's posted land rent and that demand for industrial land had increased[8]. This point had earlier been addressed in Collector's Opening Submission, when it was stated the data in KHL's first affidavit,[9] related to land rent of properties under a different scheme (the Price Quality Tender) ("PQT") as indicated in the respective values under the "Plot Code" column in KHL-9. QKW had in his 2nd affidavit made on 10 September 2013,[10] clarified that the acquired land came under the Open Land Application Scheme ("OLAS"), which required lessees to commit to a minimum investment sum on new factory buildings, plant and machinery before a lease was granted, which sum could be fairly significant. The PQT had no such investment criteria and enjoyed an annual rent escalation cap of 3% providing a lessee with certainty, whilst under the OLAS; the land rent revision (although capped at 5%) fluctuated depending on market conditions. These 2 differences explained why industrialists under the PQT scheme were prepared to pay higher initial land rents.

21. *Appellant's Method of Valuation -* KHL termed her valuation method as the "Before and After Acquisition" Method of Valuation "used in conjunction with Comparison Method incorporating Residual Method" based on the "highest and best use" or ("potential gross floor area") or maximum allowable plot ratio". The Appellant's Closing Submission described KHL's method as: a) in the first stage, the Property with land area of 12, 758.1 sqm was valued at Plot ratio 1.4; b) in the second stage, the Property minus the acquired land and with land area of 11,916.3 was valued at Plot ratio 1.4; and c) in the final stage, (b) was deducted from (a) to arrive at the value of the acquired land. This was repeated

[8] Appellant's Closing Submission Paras 63-66
[9] KHL-1, KHL 9
[10] QKW-2, Para 25(b)

using the existing plot ratio of 0.66. KHL made her calculations on the basis of a 39.81 year sublease interest in the Property.

22. In essence, KHL in her 3rd affidavit[11] made on 18 November 2013 at KHL-19 did the following:

a) Listed her 10 sales comparables using their sales prices as evidence of the market value of these properties all with an approved plot ratio of 1.4;
b) Calculated the depreciated value of the buildings/structures for each of the 10 sales comparables;
c) Deducted (b) from (a) for each of her 10 sales comparables to arrive at the value of the land (without the buildings/structures);
d) Divided her result at (c) by the land area for each of her 10 sales comparables to arrive at the dollar value per square foot ("$psf") for the land area;
e) Adjusted the result at (d) by taking into account differences in the 10 sales comparables relative to the Property only for remaining lease term, land size, date of contract with no adjustment made for location except for one sales comparable, to work out the adjusted value $psf on land by taking into account the plot ratio of 1.4 for each of her 10 comparables; selected the adjusted values of the best 4 out of the 10 sales comparables (with no reason given) and used their average adjusted value $psf multiplied by the area of the subject Property before acquisition to calculate the open market value of the Property before acquisition; and
f) repeated process (e) above for the Property *after acquisition,* to arrive at its open market value.

Whilst this method yielded a valuation figure of $1,040,000, the Appellant Company said that they were claiming only $980,000. These workings based on a maximum development plot ratio of 1.4 was used to justify their claim of $980,000 as being either the market value of the acquired land within the meaning of sections 33(1)(a) read with 33(5)(e) of the Act or the damage sustained by reason of the effect of injurious affection and/or upon severance under sections 33(1)(d) and/or 33(1)(c) of the Act. KHL then repeated the whole process based on the existing plot ratio of 0.66 for the subject property[12] to obtain a figure of $340,000.

23. In KHL's 3rd affidavit, at para 47, she said that when she applied the "Residual Method", "I estimated the gross development value of the property which is the capital value of the development or improved site. What remained after the deduction of costs incurred in the development or improvement is the "residual value", under which I took into account the value of the bare site." This statement is contrary to what KHL actually did, as outlined in paragraph 22. There was confusion relating to the residual method, which is a "prospective approach" used to ascertain the maximum price that a potential

[11] KHL3, KHL 19

[12] KHL3- KHL20

developer/buyer might be willing to pay for land bearing in mind his plans for its development/improvement based on its highest and best use. What she characterised as "the deduction of costs incurred in the development or improvement", which should be an estimate and therefore prospective, was actually her calculation of the depreciated value of the buildings in each of her 10 sales comparables. Her calculations at KHL-19 and 20 show that contrary to what she says, she had, in effect, reversed the steps in the cost method (paragraph 12(c) above) by: a) purportedly valuing the Property on an "as is where is" basis by looking at her 10 sales comparables; b) calculating the depreciated values of the building in her 10 sales comparables; and then c) deducting (b) from (a) to arrive at the value of the "bare land" comprised in the property. In so doing, KHL had assumed that depreciated building values were equivalent to the market value of buildings, thereby, in effect, overvaluing the land by undervaluing the buildings thereon. As pointed out by QKW, this assumption was incorrect as the market value of a building could go up or down depending on demand or supply whilst the depreciated value of a building could only decrease.[13]

24. KHL admitted on the 1st day of witness conferencing that her valuation method had not been used before[14] and that she was, herself, applying this method for the first time[15]. On the 2nd day, she admitted that there was no professional text verifying the validity of her approach[16]. Although KHL claimed that she had followed the "Before and After" sales comparison approach in the case of *Tan Kok Wah Dennis Christopher & Ong Bee Poh Michelle v Collector of Land Revenue, AB 2011.026 ("Dennis Tan")*, she finally admitted that she actually "took a few parts from the residual method and a few parts from Dennis Tan's case…. and put them together"[17] This was not highlighted in the Appellant's and KHL's valuation report, affidavits, opening submissions and Agreed List (AL1-17) filed for this appeal. She admitted that "basically, I use the word "residual method" because I look at the residual land value."[18]

25. The Board rejects the use of KHL's method of valuation for the acquired land, which is without precedent, flawed and wrong. The Board further notes the following:

a) KHL did not explain her choice of 10 sales comparables or detail the use of each of the industrial facilities. By not making any adjustment for their specific industrial uses, she was disregarding the differences in value for different types of industrial facilities. KHL's analysis is contrary to reality in that it wrongly assumed that the difference between the price paid for an industrial property comprised in a sublease and the depreciated building value was attributable purely to land, ignoring other considerations of a buyer such as "the readiness of the factory for the continuity of

[13] NE 23 Jan 2014 132:3-20
[14] NE 21 Jan 2014 126:15:25
[15] NE 21 Jan 2014 128:12:28
[16] NE 22 Jan 2014 32:18:29
[17] NE 22 Jan 2014 69:10:26
[18] NE 22 Jan 2014 58:4 – 59:20.

their business, the suitability of the factory for their operations, the specifications of the factory (eg power loading capacity), the fulfilment of investment criteria and the certainty of an extension of the lease.[19]" The SISV Guidelines (2000) from paragraphs 4.5.2.5 onwards, states that industrial property unlike certain other property types like office space, were less homogenous and modular in usage. A general knowledge of the various industrial uses and their respective industry space requirement was essential as this usually determined the extent of floor area for each type of usage. As a result of this dissimilarity, values of any 2 properties could also differ despite the fact that their floor areas were comparable. Physical conditions, utility connections and types of fixtures and fittings must be noted with appropriate adjustments made. The transacted price might sometimes also include the value of plant and machinery, which should be excluded because they do not form part of the immovable property.

b) *Shapiro, Mackmin and Sams, Modern Methods of Valuation (11th ed., 2013) at page 328 states:* "The rent for this type of property [ie industrial premises] is based on a rent per sqm of gross internal area" and at page 331, "Valuations of industrial premises are usually based on the GIA [gross internal area]". It must be noted that QKW had produced 5 advertisements for sale or rental of JTC properties to show that the advertisements, whilst sometimes stating land area, focused on the gross GFA and specifications of the factories with asking prices stated in absolute amounts or on a per sqm of the GFA. Collector's position was that "an industrialist pays for the useable floor space and the specifications that the factory building on the land offers, and is not overly concerned with differences in land area so long as industrial operations are not impeded.

c) KHL's method derived values ranging from $1 to $406 psf on land, which one would not normally see. It also brings into question, whether one or some of the comparables should have been selected in the first place. KHL was also unable to explain the choice of her four best comparables.[20]

d) Despite the Appellant company's argument that they would suffer a loss, should the land or building be redeveloped if the potential maximum GFA be reduced by 1,178.52sqm and that they should therefore be compensated for the value of the loss of the potential GFA at $980,000, this being either the market value of the acquired land under sections 33(1)(a) read with 33(5)(e) or the damage to the remaining Property occasioned by injurious affection and/or the severance of the acquired land under sections 33(1)(d) and/or 33(1)(c), there was no evidence of development plans[21]. It is speculative for the Appellant company to say that they have suffered a loss, where the remainder sublease term is only 9.8 years with a renewal option for 30

[19] QKW 2 – pg 17, para 25(d)

[20] NE 21 Jan 2014 129:29 – 133:5.

[21] NE 24 Jan 2014 20:15:18, where Mr Lopez admits that it would not make commercial sense to develop unless the current sublease is renewed in 2020 for a further term of 30 years.

years yet to be exercised, and where the Appellant company had already spent over $7 million refurbishing the industrial storage facility and ancillary facilities after their January 2010 purchase.

e) The Appellant Company's interest in the sublease was, at acquisition date, only a remainder term of 9.8 years, albeit with a renewal option of 30 years. Unlike a case, where a JTC sub-lessee had paid the entire consideration for a subleasehold interest upfront at the time the lease was granted and who should therefore be compensated accordingly, the Appellant Company, as sub-lessee paying JTC annual rent, cannot be compensated on a similar basis.

f) KHL also did not do any cost-benefit analysis, despite agreeing that a reasonable person considering whether to make use of the potential GFA to increase the size of the industrial facility, would calculate how much income he could earn from the additional inbuilt GFA and also take into account the construction cost to build that additional GFA, the business disruption cost, the financing cost, the necessary professional fees and other associated costs in order to derive the net benefit of building the additional GFA.[22] There was no evidence that there would be a net benefit and not a net loss should the land be developed; and

g) KHL, in her oral evidence, acknowledged that she had omitted some key steps used by the valuer in *Dennis Tan's* case. It must also be noted that in *Dennis Tan's* case, the acquired land was freehold garden land comprised in a landed terrace house property, for which the land owner had paid full consideration upfront in his purchase price. The valuation was done on an "as is where is" basis. KHL's valuation of the acquired land in this instant case was not on an "as is where is" basis but on the assumption that the land could be developed to its highest and best use based on its maximum plot ration of 1.4. As stated in subparagraph (a) above, industrial property is wholly different from residential property.

26. Parties had agreed that KHL would make a 3rd affidavit for use at the hearing and would not use her first 2 affidavits.

27. *Alternative* <u>*Claim for $980,000 as "damage sustained by reason of the effect of injurious affection and/or severance …. on the Appellant company's remaining land" under section 33(1) of the Act*</u> - The Appellant company claims in the alternative for $980,000 as the amount of damage quantified under sections 33(1)(d) and/or 33(1)(c) of the Act, being "damage sustained by reason of the effect of injurious affection and/or severance …. on the Appellant company's remaining land". With the loss of the acquired land, the Appellant company, should they choose to redevelop the remainder of the Property to its maximum plot ratio of 1.4, would realise less than their desired returns in the value of $980,000. This claim fails for the reasons in paragraph 25 above. Seen in perspective,

[22] NE 22 Jan 2014 44:5:27

what the Appellant Company has "lost" is a strip of land fronting the Property, where there were car park lots, planter boxes and trees, for which LTA has provided reinstatement at LTA's cost and for which Collector had provided compensation. The existing detached industrial facility remains unaffected on the remaining 93.4% of the Property and continues to generate income for the Appellant Company. The Board accepts that valuations of industrial premises are generally based on the actual GFA.[23]

28. The Board finds that the Appellant Company has not proved that the Collector did not use the appropriate method or that the Collector's method was used wrongly or that the Appellant Company's method is the appropriate method. The Board confirms the Collector's market value award of $15,870 for the acquired land.

29. *Appellant Company's other claim*s:

   a) Loss of 14 palm trees, turfing and designed landscape(shrubs and flowering);
   b) Expenses for additional cleaner for 5 years (estimated public works construction period);
   c) Costs of additional security guard services at the entrance guard house;
   d) Maintenance costs of the additional and/or newly installed structures, utilities, services and equipment; and
   e) Costs of erecting auto-barrier with intercom and CCTV at entrance of staff visitor car park.

Loss of 14 palm trees, turfing and designed landscape (shrubs and flowering) - The Collector did not dispute that in principle, these claims were compensable as injurious affection to "other property" under section 33(1)(d) of the Act but submitted that the Appellant Company had failed to prove the sums claimed. The Appellant Company claimed $1,200 per palm tree for a total of $16,800 based on a quotation from a company that had earlier given the Collector a quotation of $450 per palm tree for a total of $6,300. The Appellant Company, although maintaining that the price of $1,200 per palm tree was for a grown palm tree, as were the palm trees on the acquired land, did not provide evidence to account for the price difference in the two quotations. As for the claim for turfing costs at $4,000, there was no evidence to show that sum was spent wholly for turfing the acquired land and that it had not also been used for turfing the other areas and if so, which areas or amounts were involved. Although the Appellant company also claimed $1,867 as compensation for the "shrubs and flowering in the 10 planter boxes, there was no evidence to prove that the Collector's $8,800 compensation for this item was not adequate. The Board rejects this claim by the Appellant Company.

[23] Shapiro, Mackmin and Sams, Modern Methods of Valuation (11th ed, 2013).

30. *Expenses for an additional cleaner at $65,948.00, additional security guard services at $774,686.00 and maintenance costs for additional and/or newly installed structure, utilities, services and equipment at $25,361.00 ("maintenance and staff costs")* - The issue is whether such costs are compensable under section 33(1) of the Act. In 1973, the Act was amended to disallow a claim for compensation based on "the damage ……… sustained by the person interested ….. by reason of the acquisition injuriously affecting ……….his actual earnings."[24] The term "his actual earnings" was removed from the Act. It was then explained in Parliament that "the actual earnings of a person affected by acquisition of his land shall be disregarded by the Board in assessing compensation for the land acquired." The Appellant Company have argued that the 1973 amendments only sought to disallow claims for compensation based on reduced revenues but not claims for compensation based on increased costs.

31. The Board is of the view that the term "actual earnings" means earnings after deducting costs from revenue. The Act was amended to remove the term "actual earnings", which term must mean the substantive earnings after taking into account revenues less costs. The removal of the term "actual earnings" must be interpreted in light of the wording in section 33(1), which is an exhaustive list of all matters that can be considered in a compensation claim. The Court of Appeal in the case of *Ng Boo Tan v Collector of Land Revenue [2002] 2 SLR (R) 633* stated that the phrase "and no others" in section 33(1) of the Act "*reveals Parliament's intention to set out a fully comprehensive and exhaustive list of matters to be considered in determining compensation for land acquisition…*" The Board is of the view that the maintenance and staff costs of the Appellant are not compensable under the Act as such items relate to and affect "actual earnings."

32. Apart from the clear intent of the amendment, it would also be a highly speculative exercise to attempt to estimate increased costs in future, which the Appellants in this case, have projected not only for the remaining 9.8 years of the sublease but also for another 30 years, on the assumption that they would be renewing the sublease.

33. In light of the Board's decision, there is no need to go further into the Appellant company's alleged claims for the costs of an additional cleaner to clean the dust during 5 years of construction for the MRT station, the costs of additional security guards at the entrance guardhouse and the maintenance costs of the additional and/or newly acquired structures, utilities, services and equipment for 39.8 years from acquisition date. Nonetheless the Board notes that:

    a) evidence was not produced to show dust pollution[25] or that the services of a cleaner at

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[24] Prior to the 1973 amendment, section 33(1)(d) was:
"33. – (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall take into consideration the following matters and no others, namely: …
(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 his other property, whether movable or immovable or his actual earnings."
[25] NE 24 Jan 2014 11:12:14 and 11:15:27

$65,948.00 would be wholly for dealing with dust pollution[26] beyond a statement by the Managing Director of the Appellant Company at the hearing that there was dust blowing in from the entrance and exit. Despite saying that they had already hired a cleaner, there was no evidence and indeed he, in his court evidence, contradicted himself when he identified a different person to be the cleaner instead of the person, whose payslip he had exhibited in his affidavit;[27]

b) evidence was not produced to show the need to hire a security guard at the entrance guardhouse on weekdays at $774,686.00 for 39.8 years from date of acquisition. Before the acquisition, the Appellant Company did not have a weekday day security guard and according to them, their receptionist would monitor the CCTV coverage for the combined entrance/exit but she would not be able to do so, thereafter as there was now a separate entrance and exit, albeit also monitored via CCTV. The two quotations in the Managing Director's affidavit were for daily night security guard services[28] and daily night security guard services or day security guard service on Mondays to Sundays and public holidays[29]. Although the error in the 1st quotation was attributed to a "typo error", no proof of this was given[30].

c) evidence was not provided to show the difference, if any, between what the Appellant company were already paying for maintenance of their existing facilities before acquisition and what they would be paying for the new or additional equipment provided by LTA and the $25,361 maintenance costs claimed by the Appellants for the additional and/or newly installed structures for the next 39.8 years. These quotations had not been followed upon by the Appellant company; and

d) The Appellant Company had failed to show that post-acquisition, there was a need for them to erect an auto-barrier with intercom and CCTV at the entrance of the staff/visitor car park. The Board finds that based on the evidence, the traffic arrangements post-acquisition would be more orderly and safer with transport vehicles and heavy vehicles being prevented from turning into the car park area[31]. The evidence of Mr Chong from LTA on this was not challenged by the Appellants[32] and whilst the Managing Director raised a new point in his evidence before the Board that an auto-barrier was necessary to prevent vehicles from turning into the Property's front driveway to use it as a shortcut, he admitted that he had not raised this before and that it was "a new thing which I am seeing now".[33] The Appellant Company had not installed an auto-barrier[34].

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[26] NE 24 Jan 2014 12:7-9
[27] NE 24 Jan 2014 14:5-29, 14:14-29, 47:31-32, 14-4-29
[28] Lopez at pp 307
[29] Lopez at pp 308, NE 24 Jun 2014 17:32-18:5
[30] NE 24 Jan 2014 14:30 – 15:19, 18:6-8, 16:30 – 17-31
[31] NE 24 Jan 2014 31:7-22
[32] NE 24 Jan 2014 58:17-26
[33] NE 24 Jan 2014 25:20
[34] NE 24 Jan 2014 25:26-27, 51:14-18

34. On the evidence and for the reasons given, the Board finds:

a) That the Appellant Company has not discharged the onus of proving that the Collector's award of $15,870 being statutory compensation for the acquired land and the Collector's award of $20,930 for compensation for the loss of 8 car park lots, 14 palm trees, 3 fruit trees and 10 planter boxes (inclusive of shrubs and flowering) being the losses, costs and expenses suffered or reasonably to be incurred by the Appellant company as a result of the land acquisition are inadequate; and

Costs

b) As the Board has dismissed the appeal and confirmed the amount of compensation awarded by the Collector and in accordance with section 32(1), the costs of the appeal to this Board are to be paid by the Appellant Company to the Collector. The issue of costs will be dealt with separately.

Commissioner of Appeals Ms Foo Tuat Yien
Assessor Prof Florence Ling Yean Yng
Associate Prof Leong Kwong Sin