

LAND ACQUISITION ACT

APPEALS BOARD

AB 2011.026

In the Matter of the Acquisition of Land at
Lot 3076T pt of Mukim 18
22 Jalan Kuak S577793

Between

Mr Tan Kok Wah Dennis Christopher & Mdm Ong Bee Poh Michelle

... Appellants

And

Collector of Land Revenue

... Respondent

Mr C Ramesh for Appellants
Mr Peter Koy 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 \$70,000 in respect of the acquired land at Lot 3076T pt Mukim 18 be confirmed.

And

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

AB 2011.026Decision(1)

BRIEF STATEMENT OF REASONS

Introduction

(1) On 19 January 2011, ("acquisition date") a notification No. 138 was published in the Government Gazette, Electronic Edition, under section 5 of the Land Acquisition Act ("s 5 declaration") declaring that part of the land at Lot 3076T Mukim 18 was needed for a public purpose namely "Construction of North South Expressway Stage 1 from Admiralty Road West to Toa Payoh Rise and Comprehensive Redevelopment." The area of the land to be acquired was 24.4 square metres (sqm).

(2) Subsequently, at the request of the appellants, the land area to be acquired was reviewed and reduced to 11 sqm ("acquired land").

(3) *Description of the property* - Lot 3076T Mukim 18 is two storey corner terrace dwelling house with an attic at No. 22 Jalan Kuak ("the property"). The acquired land is a 11 sqm triangular-shaped portion at the rear of the dwelling house. A plan of acquired land is shown at GL-3 of the Collector's affidavit filed on 7 August 2012. The acquired land comprises a concrete covered rear yard. A portion of the boundary wall and fence, some steps and a gate are affected by the land acquisition. The dwelling house is not affected by the acquisition.

(4) The rear of the property is separated by a strip of land from Marymount Road. The appellants had extended their property fencing beyond the cadastral boundary to encroach into the strip of adjoining land belonging to another private land owner. This encroached area had been partly cemented over and partly planted with grass to create additional space and garden for the appellants' enjoyment. The encroached area does not belong to the appellants.

(5) Pursuant to section 10 of the Land Acquisition Act ("Act"), the Collector of Land Revenue's ("Collector") Inquiry was held on 1 March 2011. The Appellants submitted a claim for compensation of \$531, 500 comprising \$527,000 being the market value of the acquired land as at 19 January 2011 and \$4,500 being their house-moving expenses. No working or comparable sales figures were given in the appellants' valuation report on how the calculation of \$527,000. On 19 July 2011, the Collector gave notice of an award of a statutory compensation of \$70,000 for the market value of the acquired land.

(6) On 1 August 2011, the appellants filed notice of appeal.

(7) On 4 October 2011, the Collector, in his Grounds of Award, stated that in determining the statutory compensation of \$70,000 awarded for the acquired land, he had considered the following:

8.1 Pursuant to Section 33(a)(ii) of the Act, the market value of the acquired land as at the date of publication of the declaration made under section 5, viz the market value of the acquired land as at the date of acquisition. The valuation is based on market comparison method. Comparables in the vicinity of the acquired land were used and adjustments were made for, inter alia location and size of the properties, and date of the transactions.

8.2 Pursuant to Section 33(5)(e) of the Act, the market value for 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 by or under the Planning act (Cap 232) as at the date of acquisition and any restrictive covenants in the title of the acquired land. No account has been taken of any potential value of the land for any other use more intensive than that permitted by or under the Planning act as at the date of acquisition.

(8) *Petition of Appeal* - On 18 October 2011, the appellants filed their Petition of Appeal for a claim of \$531,500 consisting of the items stated in paragraph (4). Apart from the loss of enjoyment of the extended outdoor space at the rear of the property outlined in paragraph (3), the appellants state: i) that the Collector had not fully considered their rights to continuous and peaceful enjoyment of the property –suffering not just from the final aesthetics point of view, but also real and permanent negative impact on them, mentally, physically, emotionally, socially and financially; ii) that the Collector had not considered the significant costs already incurred by the appellants, the unnecessary costs that they were forced to incur (including the application) and would be incurring when deemed necessary as a direct result of the gazette; iii) that the compensation did not correctly reflect the state of the market as at the date of the gazette of the land acquisition, neither in terms of raw land nor in terms of a new, fully built-up residential unit; and iv) that the Collector had not provided for house-moving expenses occasioned by the acquisition and the foreseeable disruptions affecting the occupation of the property, which had led the appellants to relocate in advance until all such disruptions came to an end.

(9) At a pre-hearing conference, directions were given for the conduct of the case and for evidential report and affidavits to be filed and exchanged for the hearing from 22 to 24 August 2012.

(10) *Witnesses* – Mr Tan Kok Wah, Dennis Christopher, one of the appellants and his real estate valuer, Mr Wilson Lim Yen Kia of Wilson Realty Private Limited gave evidence for the appellants. Mr Gilbert Lok Wen Jie, Collector, Ms Lim Choon Huang, Senior Engineer and Project manager for the Land Transport Authority for the North-South Expressway project, Ms Yek Pei Ling, a qualified real estate valuer and Senior Manager at Knight Frank Private Limited and Ms Lydia Wong Loo Kuan, qualified real estate valuer and Managing Director, Advisory Services at Knight Frank Private Limited gave evidence for the Collector.

(11) *Statutory Compensation for the Acquired Land* - Section 33 of the Act provides:

(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)

.....

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

.....

(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, in any other manner;

(e) if in consequence of the acquisition, he is compelled to change his residence or place of business, the reasonable expenses incidental to the change;

(12) The appellants' counsel withdrew the claim under section 33(1)(d) at the hearing. The claim for severance damage under section 33(1)(c) was addressed as part of the before and after acquisition valuation approach of the two valuers, which considered the possible decrease in the value of the property after acquisition, arising out of the difference in the values of the property before and after acquisition. The appellants, in their evidence, did not raise any other component of severance damage with respect to the acquired land.

(13) Pursuant to section 25(3) of the Act, the onus of proving that the Collector's award is inadequate is on the appellants. The appellants are required to prove their case on a balance of probabilities. Case law has recognised that an appellant in a land acquisition appeal is analogous to a plaintiff.¹

(14) *Basis for valuation* - Both valuers agreed that the basis of valuation should be on open market value and adopted the same comparable sale method of valuation. In their valuation reports, both valuers were of the opinion that the compensation value of the acquired land should be determined using the "before and after acquisition" valuation method, which computes the difference in the value of the property before acquisition and the value of the property after the acquisition.

(15) *Mr Wilson Lim's valuation and evidence* - Mr Wilson Lim, the appellants' valuer, made a bald assertion in his affidavit that based on the comparable method of valuation, taking into account transactions of comparable properties, the prevailing market conditions and underlying economic factors, the differences between the subject property and the comparables in terms of location, tenure, size, shape, design and layout, age and condition of buildings, date of transaction and other factors affecting its value, the open market value of the land before partial land acquisition and after partial land acquisition was \$4,503, 000 and \$3,976, 000 respectively with the difference being the computed compensation of \$527,000 for the acquired land. His report and affidavit did not provide any explanation, working details or analysis on how he arrived at his figures. In his testimony on 22 August 2012, Mr Lim confirmed that he did not have evidence to show how he had arrived at his valuation. Although he claimed that he used the same seven comparable properties used by the Collector's valuer, Ms Lydia Wong, to arrive at his figures, he did not explain how he had arrived at a figure of \$527,000, that was much higher than Ms Wong's figure of \$70,000. His claim that he had given the list of the seven comparable properties to the Collector or his agent and that there was a supporting email to this effect, was not substantiated when it was challenged by the Collector.

(16) *Mr Tan's evidence* - Mr Tan, one of the appellants, testified on 21 August 2012, but he is not competent to give evidence on the market value of the acquired land. He produced at page 19 of his affidavit affirmed on 14 August 2012, a table of property prices for transacted properties in the area around and at Jalan Kuak during June 2010 to May 2011, drawn from the Urban Redevelopment Authority (URA) website. He also produced a table at page 20 of his affidavit on the Collector's awards for properties in Jalan Kuak, that had been wholly acquired and argued that the compensation for the acquired land was considerably lower than that for those other properties, even taking into account that the acquired land, whilst not a built-up area was not "raw land". These two tables without more and without descending into specifics of valuation relating to a particular property, do not advance the appellants' case. In his affidavit and in his testimony, Mr Tan alleged that the acquisition had resulted in the house not having a garden at all. As can be seen from the exhibits, much of the acquired land comprised the concrete rear

¹ 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 page 101

yard of the property. The “garden” that had been fenced in for the appellants’s use encroached upon land owned by someone else and for which no compensation is payable to the appellants.

(17) The appellants did not provide any evidence to substantiate their proposed compensation award of \$527,000. In his closing submission, appellants’ counsel asserted that the compensation award should be increased without stating either the amount of increase or his substantiation for an increase.

(18) *Ms Lydia Wong’s valuation and evidence* - Ms Lydia Wong, the Collector’s valuer gave evidence that her valuation of the acquired land as at 19 January 2011 was based on the continued use of the property as a residence. She arrived at the value of the acquired land by taking the market value of the property before acquisition less the market value of the property after acquisition. The market value of the property was arrived at using the Comparable Sales Method. This is consistent with what was stated in the Collector’s Grounds of Award as outlined in paragraph (7). The Comparable Sales Method seeks to establish the market value for a property by taking into consideration the sale price of similar properties (“comparables”) and making adjustments to take into account factors such as differences in the time of the sale, type of property, location and siting, building gross floor area, age and condition and land (plot) size.

(19) Unlike Mr Lim, Ms Wong provided detailed worksheets used in applying the Comparable Sales Method, one for the valuation of the property before acquisition and one for the valuation of the property after acquisition with the difference in the two values being the value of the acquired land. She gave a detailed affidavit on her working methodology and derivations of the before and after market values of the property. In her evidence, she used the sales evidence of 7 comparable landed houses between 2 November 2010 and 12 January 2011 as shown below:

List of Comparable Sale Evidence:

No	Property Address	Property type	Tenure	Land Area (sqm)	Floor Area (sqm)	Sale Price (Unit price \$psm)*	Date of Sale (DD/MM/YYYY)	Year of original completion	Renovation details
1	48 Jalan Kuak	2-storey intermediate terrace house	Freehold	90.7	130.0	\$1,168,888 (\$12,887)	02/11/2010	1970s	Renovated in 2007
2	33 Jalan Kuak	2-storey intermediate terrace house	Freehold	82.2	116.1	\$1,130,000 (\$13,747)	02/11/2010	1970s	Renovated in 2008
3	36 Jalan Pintau	2-storey intermediate terrace house	Freehold	82.0	116.0	\$1,290,000 (\$15,732)	19/11/2010	1970s	Renovated in 2009
4	35 Jalan Hari Raya	2-storey intermediate terrace house	Freehold	85.0	139.0	\$1,300,000 (\$15,294)	22/11/2010	1970s	Renovated in 2008
5	45 Jalan Hari Raya	2-storey intermediate terrace house	Freehold	85.0	121.0	\$1,150,000 (\$13,529)	26/11/2010	1970s	Original condition
6	8 Jalan	3-storey intermediate	Freehold	85.4	160.6	\$1,350,000	08/12/2010	1997	Rebuilt

	Minggu	terrace house				(\$15,808)			
7	40 Jalan Hari Raya	2-storey intermediate terrace house	Freehold	111.5	146.0	\$1,460,000	12/01/2011	1970s	Renovated
						(\$13,094)			

**unit price is computed as the sale price divided by land area*

- (20) The methodology was divided into five steps. In the process, three different adjustments were made to the sale prices of comparable properties.

Adjustments for Comparable Sales:

	Comparable 1
Sale price of comparable	\$Y
Land area (sqm)	L
<u>1) Adjustments for market, property and location attributes:</u>	
Time factor	+/- a%
Type	+/- b%
Siting	+/- c%
Location	+/-d%
Aggregate adjustment	+/- e%
Adjusted land value	$\$W = \$Y \times (1 + e\%)$

2) Estimating Depreciated building value (DBV)

Unit replacement cost (\$psm)	\$v
Gross floor area (psm)	g
Fee	+f%
depreciation	-h%
Depreciated building value	$\$ Z = (\$v \times g) \times (1+f\% - h\%)$

3) Adjustment for the size effect of lands

Unit land price (without building)	$(\$W - \$Z) / L$
Adjustment of size effect of lands	-j%
Adjusted unit land price (without building)	$\$u = [(\$W - \$Z) / L] \times (1 - j\%)$

- (21) The first adjustment involved the market values of the properties (building and land). She first adjusted the prices of the comparable properties and the property, accounting for the time lapse between the transactions and s 5 declaration, differences in property type (corner versus intermediate), siting (proximity to Marymount Road and amenities). She then derived the values of the comparable properties, as if they had been transacted on the Acquisition Date and comparable in type, siting and location attributes to the property.
- (22) The second adjustment was then made to building structure. Ms Wong estimated the depreciated building values (DBV) of the building structure for the comparable properties by deducting depreciation from the replacement costs of the existing structure, accounting for differences in building condition on the comparable lands and the buildings on the property. The adjusted land values were then separated from the building structure values by deducting the DBV from the land values estimated in the step 1. The unit land values (without structure) were obtained by dividing the net land values by the land areas of the comparable properties.
- (23) In the third adjustment, she discounted the unit land price (without structure) to account for the small size of the comparable lands relative to the property.
- (24) Ms Wong then multiplied the adjusted unit land price (land rate in Ms Wong's affidavit) by the land area of the property, to which she then added the property's DBV, finally deriving the adjusted values (building plus land) for property. She applied the same computation procedures to the seven comparable sales. In the final step, the market value of the property was estimated as the weighted average values derived from the comparable properties.
- (25) The same computation methodology was then repeated in the post-acquisition scenario, taking into account the smaller land area of the property. The difference in the values of the property estimated in the before and after acquisition periods determined the compensation award for the acquired land.
- (26) *Appellants' Challenges on Ms Wong's valuation* - Appellants' counsel questioned whether a proper and accurate assessment and valuation of the property and the acquired land could be done without Ms Wong having conducted an inspection of the property's interior. Ms Wong said that whilst she had assessed the property's exterior, Ms Yek Pei Ling, a qualified real estate valuer and a senior manager at her firm had conducted an inspection of the building and the acquired land during a site visit. Ms Yek had exhibited her photos in her affidavit and had testified at the hearing. The Board notes that experienced valuers can be expected to make reasonable adjustments on the physical condition and quality of the interior design and fixtures, based on the descriptions of the physical attributes and conditions as provided by another senior valuer. As the physical attributes of the property would not have changed significantly before and after the acquisition date, the same adjustment factors were reasonably used in Ms Wong's valuation methodology.

- (27) The issue of whether Ms Wong had wrongly valued the acquired land in “isolation” as garden land or “raw land” was also raised by the appellants. Ms Wong’s evidence was that she had valued the acquired land using the comparable sales method by valuing the open market value of the property in totality before and after land acquisition to arrive at the difference in value, being the compensation sum for the acquired land. This is consistent with her workings.
- (28) The appellants’ counsel challenged Ms Wong’s approach of deducting the depreciation building value (DBV), which is computed by deducting depreciation from the replacement costs of the existing structure, to account for differences in building condition on the comparable lands and the buildings on the acquired property. He had misunderstood and misinterpreted in his closing submission that the property’s depreciated building value (DBV) is deducted from the property value to arrive at the land values (without structure). He further claimed that the approach amounted to valuing the acquired land in “isolation” as though it were garden land. This was not the case because he omitted the step where the DBV was later added back to arrive at the adjusted values (land plus building) in Ms Wong’s method.
- (29) As for the appellants’ challenge to Ms Wong’s basis of adjustments for selected location attributes of the comparable properties specifically in comparison to a property at Jalan Minggu, that Ms Wong had failed to take into account that the property was nearer to amenities and eateries with only a short 5-7 minute walk to facilities, was nearer to an MRT station and also closer to several good schools including Ai Tong Primary School, these were substantiated with evidence. If as argued by the appellants, that the property enjoyed better location proximity to eateries, amenities and MRT station, these location premium advantages would not be changed significantly before and after the acquisition. The incremental effects of the differential location premium would be marginal on the property.
- (30) Appellants’ counsel also questioned the valuation of the property being lower per square foot compared to 48 Jalan Kuak, although the latter had been sold earlier in November 2010 with property prices having risen since. During cross-examination, Ms Wong had explained that the additional land areas are not as valuable as the “main areas”, when comparing properties with different land areas because of the marginal diminishing effect. She has further explained that the price differentials should be compared in total value terms, which show that the property valued at \$3,310,000 (pre-acquisition) was higher than 48 Jalan Kuak’s sale price of \$1,168, 888.00.
- (31) In his closing submission, appellants’ counsel said that although the Collector had acknowledged that Ms Wong’s basis of valuation by using the total open market value of the property before and after land acquisition with the difference between the values determined as the appropriate compensation payable. However, he claimed that the Collector had not included the basis of valuation in the Grounds of Award, and the Collector, when asked on this, could offer no explanation. This was indicative that the Collector did not fully consider and address his mind to the actual negative effect of the acquisition on the entire value of the property.
- (32) The Collector had stated in the Grounds of Award that the valuation was based on the market comparison method. It was also stated that comparables in the vicinity of the acquired land were used and adjustments were made for, inter-alia, location and size of

properties and the date of transactions. This is sufficient for those involved in land valuation to know that the valuation of the land was based on the difference in the open market value of the property before and after acquisition. Both valuers had used this method. The Collector had testified that an experienced valuer would be appointed for valuation of the market value of the land. All relevant information would be provided to the valuer, who would do an inspection and a valuation. The Collector would then assess the reasonableness of the best valuation and take into account other claims and information provided by interested persons. Ms Wong, had said in her evidence that she had valued the property on the before and after market valuation basis to arrive at the statutory compensation and that she had not valued the 11 sqm of acquired land in isolation or as a “garden” for which a nominal value would usually be given.

- (33) Appellants’ counsel had submitted that the Collector was not able to give a satisfactory explanation on why the compensation for the acquired property was relatively significantly lower when compared to the compensation amount awards in the appellants’ second table referred to in paragraph (16), even taking into account that the other acquisitions were acquisitions of the whole land with built up areas. Appellants’ counsel did not state his basis for this statement. The Collector had replied that each piece of acquired land was valued taking into account factors peculiar to that property. It is not for the Collector to establish that the compensation award for the acquired land was fair relative to the compensation awards for the other acquired properties along Jalan Kuak. That is not the issue here. The Collector’s valuer, Ms Wong had provided detailed justification for the statutory compensation for the acquired land. It is for the appellants to establish that the statutory compensation of \$70,000 is an inadequate market value for the acquired land.
- (34) *Were the appellants in consequence of the acquisition compelled to change their residence?* The acquired land was a 11 sqm triangular strip at the rear of the property leaving the terrace house thereon intact. The appellants, of their own accord, chose to move out in July 2011 well before construction work was slated to start. The construction works affecting the acquired land would take place outside the property. There was no compelling reason in July 2011 for the appellants to move out in anticipation of possible noise and disruption from the works of the proposed expressway. Even after during construction, the Environmental Protection and Management (Control of Noise At Construction Sites) Regulations, as pointed out by the Collector’s counsel, would require that noise levels cannot exceed certain limits, where construction is within certain distances from residential buildings. Section 33(1)(e) of the Act is clear in that moving expense should only be considered, if a person is, as a consequence of acquisition, compelled to change his residence.
- (35) On the point that the Collector had not fully considered the appellants’ rights to continuous and peaceful enjoyment of the property –suffering not just from the final aesthetics point of view, but also real and permanent negative impact on them, mentally, physically, emotionally, socially and financially, this is a bare statement and is not a relevant consideration under section 33 of the Act. Ms Lim Choon Huang, LTA’s representative gave evidence that LTA would carry out at its own cost, reinstatement works to the acquired land and would replace any fences, steps or gates on the acquired land affected by acquisition. A road side table with a pedestrian footpath, landscaping and covered roadside drains was planned for construction after completion of the expressway.

- (36) On the argument in the Petition of Appeal that the Collector had not considered the significant costs already incurred by the appellants, the unnecessary costs that they were forced to incur (including the application) and would be incurring when deemed necessary as a direct result of the gazette, no relevant evidence on this was tendered.
- (37) On the evidence and for the reasons given above, the Board finds:
- (a) that the appellants have not discharged the onus of proving that the statutory compensation award of \$70, 000 is inadequate;
- (b) that the appellants have not been compelled to move out of the property as a result of the acquisition and the appellants have not satisfied the Board that in consequence of the land acquisition, they will be compelled to change their residence and there are expenses to be taken into consideration under section 33(1)(e) of the Act; and
- (c) that the appeal fails and in accordance with section 35(1), the Board confirms the award of the Collector; and

Costs

(d) as the amount awarded by this Board does not exceed the sum 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 appellants.

Dated: 27 September 2012.

Commissioner of Appeals Ms Foo Tuat Yien
Assessor Ms Poh Kwee Eng
Assessor Mr Sing Tien Foo