

26, 1980

No.11 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

B E T W E E N :

HOWE YOON CHONG

Appellant

- and -

10 CHIEF ASSESSOR, PROPERTY TAX,
SINGAPORE

Respondent

CASE FOR THE RESPONDENT

RECORD

1. This appeal raises fundamental questions relating to the Chief Assessor's powers under the provisions of the Property Tax Act (the Act) to revalue properties listed in the Valuation List. In particular, the issues concern the validity of the notice under Section 18(2) of the Act which is issued by the Chief Assessor whenever he considers it desirable to amend the annual value of property listed in the Valuation List; the validity of the Valuation List which is prepared and maintained under the provisions of the Act in light of the constitutional provisions of Singapore which provide that all persons are entitled to the equal protection of the law; and the applicability of the so-called rule in Ladies Hosiery Case (1932) 2 K.B. 679, in Singapore, namely, that in the rating of properties correctness must not be sacrificed to uniformity.

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2. The facts of this case, which appeared in the decisions of the High Court and the Court of Appeal, are as follows :-

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- (i) The subject property is a vacant plot of land of approximately 15,000 square feet in area and is situated in a quiet and residential district known as Cairnhill in Singapore. It was purchased by Howe Min Cheng (Appellant's

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father) and another as tenants-in-common in equal shares in 1960 for \$20,000.

- p.135 (ii) Twelve years later on 19th day of December 1972 Howe Min Cheng by a Statutory Declaration affirmed that this share of property was purchased with monies which were wholly provided for by the Appellant. About four months after the making of the Statutory Declaration, Howe Min Cheng conveyed the one undivided equal share standing in his name to the Appellant. The Deed of Conveyance is dated 4th April 1973 and is preceded by a Declaration of Trust dated the same day whereby Howe Min Cheng declared that he held the equal half share in the property in trust for the Appellant after reciting that his share was purchased out of monies provided for by the Appellant. 10
- p.138
- p.136
- (iii) On 29th day of June 1973, the notice of the transfer was given to the Chief Assessor by Howe Min Cheng, the transferor, as was required of him under the provisions of Section 17(1) of the Act. 20
- p. 1
- (iv) Some three and a half months later, on 1st day of October 1973, the Chief Assessor issued a Section 18(2) Notice to the Appellant proposing to amend the 1973 Valuation List by increasing the annual value of the subject property from \$1,340, as assessed in 1953 under the Municipal Ordinance (when the rating system was in force) to \$26,000. 30
- p. 4
- (v) The Appellant's objection to the Chief Assessor's proposal was rejected by the Chief Assessor in March 1974.
- p. 5
3. The Appellant appealed to the Valuation Review Board. The grounds of appeal, in substance, were :- 40
- p.6-10
- (i) That the legal significance and character of the transfer took the matter outside the ambit of Section 18 and as such the Chief Assessor had no grounds to issue the Section 18(2) Notice.
- (ii) That the proposed valuation or increased valuation is ultra vires the Act and the Constitution of Singapore.
- (iii) That since the Valuation List does not contain up-to-date valuations or revaluations of all the properties 50

therein, it offended the equal protection and the equality provisions of the Constitution of Singapore.

- (iv) That the proposed value of \$26,000 is manifestly excessively and wrong in law in comparison to other adjoining properties in the locality and that the original annual value of \$1,340 should stand.

10 4. The relevant provisions of the Act are as follows :-

Section 2. "In this Act, unless the context otherwise requires -

"annual value", as used of a house or building or land or tenement...means the gross amount at which the same can reasonably be expected to be let from year to year,.... .

Provided that -

20 (a)

(b) in assessing the annual value of any property the "annual value" of of such property shall, at the option of the Chief Assessor, be deemed to be the annual value as hereinbefore defined or the sum which is equivalent to the annual interest at five percent -

30 (i) on the estimated value of such property, including buildings, if any, thereon; or ..."

Section 9. "(1) The Chief Assessor shall cause to be prepared a list, which shall be known as the 'Valuation List', of all houses, buildings, lands and tenements:

... ..

(2) The Valuation List shall contain in respect of all houses, buildings, lands and tenements -

- 40 (a) a description or designation sufficient for identification;
- (b) the name of the owner;
- (c) the annual value ascribed thereto; and
- (d) such other particulars as the Chief Assessor may from time to time deem necessary".

Section 10. "It shall be in the discretion of the Chief Assessor either to cause to be prepared a new Valuation List every year or to adopt the Valuation List then in force, with such alterations and amendments as may have been made from time to time in accordance with the provisions of this Act."

Section 12. "(1) Any owner aggrieved by the inclusion in the Valuation List of any property or by the annual value ascribed thereto or by any other statement made in or by any omission from the Valuation List may, at any time within the period allowed for inspection of the Valuation List, apply to the Chief Assessor by written notice of objection in the prescribed form, to amend the Valuation List accordingly. 10

(2) Such application shall state precisely the grounds on which the objection is made and the amendments desired to remove the objections. 20

(3) The Chief Assessor shall consider the objection and may either disallow it, or allow it either wholly or in part, and shall serve the owner by post or otherwise with written notice of his decision.

(4) Any owner dissatisfied with the decision made by the Chief Assessor under this section may, within twenty-one days after such service, appeal to the Valuation Review Board in the manner provided in Section 26 of this Act". 30

Section 17. "(1) Whenever any estate or interest in any house, building, land or tenement included, or capable of being included, in a Valuation List is sold or transferred whether by instrument or operation of law or otherwise the vendor or transferor shall within one month after such sale or transfer give notice thereof to the Chief Assessor in such form as may be prescribed by the Chief Assessor". 40

Section 18. "(1) Where it appears that any Valuation List is or has become inaccurate in any material particular, the Chief Assessor may, on the application of any person interested, or otherwise, and in the manner hereinafter provided, amend the Valuation List accordingly.

(2) When, in pursuance of subsection (1) of this section, the Chief Assessor considers it desirable that an amendment should be made to any Valuation List he shall give notice 50

thereof to the owner of the property concerned stating what amendment is considered desirable and the date from which it is proposed the amendment shall take effect.

10 (3) Any owner who desires to object to such amendment may, within twenty-one days of the service of such notice, give to the Chief Assessor notice of objection in the manner prescribed in Section 12 of this Act.

(4) Any owner dissatisfied with the decision made by the Chief Assessor under this section may, within twenty-one days after such service appeal to the Valuation Review Board in the manner provided in Section 26 of this Act

(5)

(6)

20 (7) For the purposes of this section, the Valuation List shall be deemed to be inaccurate in a material particular where -

(a) the Chief Assessor is of the opinion that the annual value of a property included in the Valuation List does not correctly represent the annual value evidenced by -

(i)

30 (ii)

(iii) the consideration paid or value passing on the sale or transfer directly or indirectly of any estate or interest in that or similar property, including the sale or transfer of seventy-five per cent or more of the issued ordinary shares of a land-owning company, whether or not the Chief Assessor exercises the option given in paragraph (b) of the proviso to the definition of "annual value" in Section 2 of this Act;

40 (b)

(c)

(d) property, not exempted from the

provisions of this Act, has not been included in the Valuation List:"

Section 19. "(1)

(2)

(3)

(4) Where any property is included for the first time in a Valuation List for any year, the tax in respect of such property shall, notwithstanding that the property has not previously been included in any Valuation List authenticated under this Act, be payable in the case of a building from the date of completion of such building and in the case of land from such date as may be determined by the Comptroller, but in none of these cases shall such tax be payable for more than six years prior to such inclusion. Such tax shall be calculated on the basis of the annual value ascribed to such property in such Valuation List". 10 20

5. Also relevant is Article 8(1) of the Federal Constitution of Malaysia which is part of the constitutional law of Singapore by virtue of Section 6 of the Republic of Singapore Independence Act, 1965.

Article 8. "Equality".

(1) All persons are equal before the law and entitled to the equal protection of the law". 30

p.19-22 6. By a decision dated 10th day of December 1975 the Valuation Review Board dismissed the appeal on the ground that the assessment of the subject property was not unreasonable and affirmed the annual value at \$26,000 for the year 1973.

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p.38-51

7. The Appellant appealed to the High Court of Singapore and the appeal was allowed by A.P. Rajah J. who, in his judgment dated 21st day of January 1978, held that the Notice issued under Section 18(2) was invalid and of no effect as the Chief Assessor in issuing the Notice had acted outside the scope of the said Section. 40

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8. The Respondent appealed to the Court of Appeal in Singapore. The appeal came on for hearing before Wee Chong Jin C.J., Choor Singh J. and D.C.D'Cotta J. On 20th day of November 1978 the Court of Appeal delivered judgment

allowing the appeal. It held that :-

RECORD

p. 4

(i) The Chief Assessor's Notice under Section 18(2) was valid as the Chief Assessor clearly had powers under the provisions of Section 18 to issue the Notice.

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(ii) The Valuation List was a valid list as the Chief Assessor in preparing it had not acted on the wrong basis or contrary to the direction of the Act. There has been no violation of the equality provision of the Constitution both in the preparation of the Valuation List as well as in the revaluation of the subject property. Also, the Act and the application of its provisions by the Chief Assessor are not discriminatory of the Appellant.

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(iii) The Act embodies the principle of independent assessment and that once a property is correctly assessed it is immaterial that other properties may, as a consequence, be incorrectly assessed.

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(iv) The Valuation Review Board had not erred in principle in affirming the annual value at \$26,000 for 1973, which is sustainable in light of the sales of comparable properties in the vicinity.

9. On 19th day of February 1979 the Court of Appeal granted the Appellant leave to appeal to the Judicial Committee of the Privy Council.

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10. The Respondent respectfully submits that :

(i) The facts of this case are clearly within the scope and ambit of Section 18 of the Act as the Chief Assessor has, as evidenced in the report of the Valuation Review Board under Section 28 of the Act, relied on the sale of other similar properties. It should be noted that the Chief Assessor, in determining the annual value of a particular property, is entitled to consider the sale price of a "similar property". Accordingly the Notice issued under Section 18 is a valid one.

p.11-15

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(ii) The Act in requiring the preparation of a Valuation List of "all houses, buildings, lands and tenements" speaks of all houses, buildings, lands and tenements which are known to the

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Chief Assessor and assessable to tax under the Act. This is reflected in Section 12(1), 18(7)(d) and 19(4).

- (iii) Neither the Act nor any principle of law requires the Chief Assessor to revalue all properties at one and the same time. As was said by Lord Hawarth in Lilley & Skinner Ltd. v. Essex County Valuation Committee (1935) AER 54 at page 56 -

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"The contention is that if revaluation is to be made it must be made unu flatu with regard to all hereditament in the area. The law does not compel any such impossibility".

- (iv) It is a fundamental principle of valuation that each property should be assessed independently. This principle is embodied in the primary definition of annual value in Section 2 of the Act. The Chief Assessor is, therefore, statutorily obliged to assess each property independently. If in performance of his statutory duty he arrives at a correct assessment it would be patently absurd to say that the assessment is unlawful or ultra vires the provisions of the Act just because he had not, at the same time, corrected incorrect assessments of other comparable properties. The law does not compel the impossible task of assessing all properties at the same time.

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- (v) If a property is correctly assessed it is immaterial that, as a consequence, other properties are in fact assessed incorrectly. In other words, the rule in Ladies Hosiery Case that correctness should not be sacrificed to uniformity is embodied in the Act.

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- (vi) There has been no denial of "equal protection of the law" as envisaged by Article 8(1) of the Constitution as there is no evidence whatsoever of any intentional or arbitrary discrimination by improper execution by the Chief Assessor of his statutory duties.

- (vii) The assessment is in accordance with proviso (b) to Section 2 of the Act which gives the Chief Assessor a clear option either to adopt the annual value as arrived at by using the primary definition or to fix the annual

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10 value at a sum equivalent to an annual interest at 5 per cent on the estimated value of the land. In this particular case the Chief Assessor adopted the second option i.e. annual interest at 5 per cent on the estimated value of the land. The subject property was valued at \$35 per square foot. This figure is considered fair and reasonable in light of the sales of comparable properties in the vicinity of the subject property which are set out in the Report to the Valuation Review Board under Section 28 of the Act.

p.11-15

20 11. The Respondent respectfully submits that the decisions of the Valuation Review Board and the Court of Appeal of Singapore were correct for the reasons given in their respective judgments and that this appeal be dismissed with costs for the following among other

p.19 and p.60

R E A S O N S

- (i) That the Act empowers the Chief Assessor to re-value the subject property and the re-valuation has been properly done within the scope of the Act.
- 30 (ii) That neither the Act nor the application of its provisions are ultra vires the Constitution of Singapore
- (iii) That the Valuation List for 1973 is valid as it was prepared in accordance with the directions of the Act.
- 40 (iv) That the assessment is proper, fair and reasonable and is supported by assessments of comparable properties.

GEOFFREY RIPPON Q.C.
JAMES S.C. CHIA

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CHIEF ASSESSOR, PROPERTY
TAX, SINGAPORE Respondent

CASE FOR THE RESPONDENT

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