

LAND ACQUISITION ACT

APPEALS BOARD

AB 2001.052

In the Matter of the Acquisition of Land at
Lot 1118 of Mukim 24
189/A Paya Lebar Road

Between

Kong Kuee Chin

... Appellant

And

Collector of Land Revenue

... Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of \$1 200 000 in respect of the land at Lot 1118 of Mukim 24 be increased to \$1 381 384;

And

(2) That the Collector of Land Revenue pay to the appellant the balance of the award together with interest at 6% per year from the date of taking possession;

And

(3) That the deposit paid by the appellant be repaid to her;

And

(4) That there be no order as to costs of this appeal.

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 28 April 2001 ("acquisition date") a notification was published in the *Gazette* of a declaration made under s 5 of the Land Acquisition Act ("s 5 declaration") that the land at Lot 1118 of Mukim 24 ("acquired land") was required for a public purpose namely Construction of Circle Line and Comprehensive Development. The appellant was then the proprietor of the acquired land for an estate in fee simple and is a person interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim of \$3 011 472 for compensation. The respondent ("Collector") found that the market value of the acquired land as at 28 April 2001 was \$1 200 000 and on 12 November 2001 he made an award of compensation in that amount.

(3) The appellant appeals against the award. In her petition of appeal she complains that the Collector has failed to take into consideration certain matters set out in para (e) but the statements there are largely argumentative except for an oblique reference to the "current market value of the [acquired land] (which the appellant's valuers have stated to be \$2 300 000)". No ground is alleged for the additional \$711 472. The appellant annexed to her affidavit lodged on 15 July 2002 a valuation report which stated that the market value as at 28 April 2001 was \$2 300 000 and that \$711 472 included \$20 000 for "cost incurred in renovation" and \$590 872 for "Lost (*sic*) of goodwill". No reference is made to the matters to be taken into consideration under s 33(1). The Collector does not take any objection to the petition and at the close of the case he proposed compensation in the amount of \$1 304 384.16 for the market value as to \$1 285 000 and for legal fees in the purchase of alternative premises as to \$6 364.16 and stamp duty as to \$13 020.

Acquired Land

(4) The acquired land consists of a rectangular plot on the West side of Paya Lebar Road at its junction with Beng Huat Road and to its North with a building on it and which is 189/A Paya Lebar Road ("189/A"). The site area is 198.9 sm. 189/A is a corner shop-house in a terrace block of three shop-houses. The side of this house facing Beng Huat Road and the front facing Paya Lebar Road are served by a walk-way at first storey level. The walk-way appears to be continuous from the side of this house to the front of the whole of the terrace block. The land on which the terrace block stands is set back from the main line of Paya Lebar Road and this provides a short service road in front of the shop-houses. Beng Huat Road is a cul-de-sac off Paya Lebar Road and proceeds to a point about twice the length of the corner shop-house. The terrace block is served by a back lane and this back lane appears to continue along the side of the other corner shop-house in the block and end at Paya Lebar Road. It appears that the whole of the terrace block is surrounded by the cul-de-sac on the South, the back lane on the West, the continuation of the back lane on the North and the service road on the East and this sets it apart from the main thoroughfare along Paya Lebar Road.

(5) The acquired land is zoned Residential in the 1998 Master Plan. In 1986 written permission was granted for the first storey ("189") to be used for an eating house subject to the condition that it would lapse in 1988 unless further written permission was granted. In 1994 written permission was granted for change of use of the second storey flat ("189A") to "refreshment area, as extension to the eating house use on the 1st storey" subject to the condition that the use should cease in 1995 unless further written permission was granted. In 1999 written permission was granted for the "Retention of use of the 2-storey shop/flat as an eating house" and in 2000 written permission was granted for "Continued use of the 2-storey shop/flat as eating house" to expire in 2003 and it appears that as at the acquisition date and for a few years before that the permitted use of the corner shop-house, both 189 and 189A, was for an eating house. As at the acquisition date 189 was used for an eating house but the use to which 189A was actually put was residential.

(6) The acquired land is about 8 km from the city centre at Collyer Quay. The locality is largely industrial and commercial in character with a mix of landed factories and warehouses, flatted industrial buildings, detached factory buildings and retail shops. Residential developments nearby include Happy Gardens and MacPherson Green and the HDB MacPherson Estate. Paya Lebar Road is well served by a public bus system.

Compensation

(7) 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) the market value -

(i) ...

(C) as at 1st January 1995 in respect of land acquired on or after 27th September 1995;

(ii) as at the date of publication of the notification under section 3(1) if the notification is, within 6 months from the date of its publication, followed by a declaration under section 5 in respect of the same land or part thereof; or

(iii) as at the date of publication of the declaration made under section 5,

whichever is the lowest

There is no evidence of a s 3(1) notification having been published and the s 5 declaration was published on 28 April 2001 (the acquisition date as noted earlier) and it is common ground that the market value as at 28 April 2001 was lower than as at 1 January 1995 and it is the market value as at 28 April 2001 that among other matters has to be taken into consideration.

Petition of Appeal

(8) In para 6 of his Grounds of Award dated 5 April 2002 lodged pursuant to s 23(2) the Collector said:

c As provided under Section 33(5)(e) of the said Act, the market value of the property is computed on the basis [of its existing use] as a shophouse or in anticipation of its continued use for the purpose designated in the Development Baseline referred to [in] Section 36 of the Planning Act 1998, whichever is the lower. No account has been taken of any potential value of the property for any more intensive use.

(The words in square brackets have been added as they must have been intended.)

Section 33(5)(e) provides:

(5) For the purposes 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 expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the Development Baseline referred to in section 36 of the Planning Act 1998, whichever is the lower ... and no account shall be taken of any potential value of the land for any other more intensive use

It is quite impossible to know from the Grounds of Award whether the Collector has found the existing use price to be lower or higher than the Development Baseline use price. It is also quite impossible to know whether from the Grounds of Award or the whole of the evidence adduced what the Development Baseline use was as at the acquisition date.

(9) In para (e)(3) of her petition of appeal the appellant objects to the acquired land being valued on the basis of its existing use as a shop-house but in para (e)(6) she refers to transactions of shop-houses at 400 and 410 Upper Paya Lebar Road as comparables. She also refers to other transactions. From the evidence adduced by both the appellant and the Collector it is apparent that the market value of the acquired land has been determined on the basis of its existing use as an eating house at 189 and as a residential flat at 189A. In paras (e)(8) to (e)(10) of her petition of appeal the appellant also refers to loss of goodwill and expenses which will be incurred.

Appellant's Valuation

(10) Ms Kwang Heng Lee of PREMAS International Ltd testifying for the appellant adopted a summation approach that assumed that the market value of the acquired land was the sum of the market value of 189 and of 189A. As at the acquisition date 189 was used for an eating house and 189A was used for a residential flat with 6 bedrooms. The site area is 198.9 sm and according to Ms Kwang so was the floor

area of 189. She said that the floor area of 189A was 128.15 sm. Access to 189A appears from the photographs to be from a first storey level door at the side of the building which opens to a staircase. The appellant conceded that 189A was not comprised in a separate certificate of title and that as at the acquisition date it was incapable of independent dealings which required registration.

(11) To determine the market value of 189 Ms Kwang referred to the following transactions:

<i>Location</i>	<i>Contract Date</i>	<i>Price</i> <i>Site Area Rate</i> <i>Floor Area Rate</i>	<i>Site Area</i>	<i>Floor Area</i>
1 400 Upper Paya Lebar Rd	Sep 2000	\$1 238 000 \$7 916/sm \$9 379/sm	156.4 sm	132 sm
2 410 Upper Paya Lebar Rd	Oct 2000	\$1 248 000 \$7 944/sm \$8 667/sm	157.1 sm	144 sm
3 33/35 Upper Paya Lebar Rd	Jun 2000	\$2 020 000 \$6 841/sm \$8 487/sm	295.3 sm	238 sm

All are single storey buildings. In respect of items 1 and 2 Ms Kwang made adjustments of +10% for corner unit and in respect of item 3 she made an adjustment of +10% for size and location. Taking into consideration these transactions she came up with a number of figures for the market value and eventually said that it ranged from \$1 496 633 to \$1 738 064. She said that she took \$1 700 000 to be the market value of 189.

(12) To determine the market value of 189A Ms Kwang referred to the following transactions:

<i>Location</i>	<i>Contract Date</i>	<i>Price</i> <i>Floor Area Rate</i>	<i>Floor Area</i>
1 7B Lor 31 Geylang 3rd Storey	Apr 2001	\$570 000 \$4 672/sm	122 sm
2 7D Lor 39 Geylang 4th Storey	Mar 2001	\$525 000 \$4 449/sm	118 sm
3 28C Lor 30 Geylang 2nd Storey	Jan 2001	\$370 000 \$3 304/sm	112 sm
4 9B Lor 15 Geylang 3rd Storey	Dec 2000	\$350 000 \$3 365/sm	104 sm

She made no adjustments for any differences although she agreed that there were differences between 189A and the reference properties none of which was a second storey flat over an eating house as 189A was. She also made no adjustments for size or for location although she said she offset differences in location against

differences in floor level. She did not say what the market value of 189A would be on the basis of these transactions but she concluded that the market value of the acquired land was \$2 300 000. She would have found the market value of 189A to be about \$600 000.

Collector's Valuation

(13) Ms Chee Hok Yean of Jones Lang LaSalle Property Consultants Pte Ltd testifying for the Collector also adopted the same approach in the valuation of the acquired land. To determine the market value of 189 she referred to the following transaction:

<i>Location</i>	<i>Contract Date</i>	<i>Price Site Area Rate</i>	<i>Site Area</i>	<i>Floor Area</i>
191 Paya Lebar Road	Jul 1994	\$830 000 \$5 307/sm	156.4 sm	142.4 sm

191 Paya Lebar Road ("191") is the first storey unit of the intermediate two storey shop-house in the same block of terrace shop-houses as the acquired land. It is just next door. Unlike 189 it is comprised in a strata certificate of title separate from the second storey unit which is 191A Paya Lebar Road ("191A").

(14) Ms Chee made adjustments of -20% for time, -2% for site area, -2% for floor area and walkway area and +5% for double frontage for a total of -19%. This gave an adjusted site area rate of \$4 299/sm for a market value of what would have been about \$855 000. There is no evidence of sales from which it may be determined that a negative adjustment for time should be made or that an adjustment of -20% would be appropriate or that any adjustment for time was warranted at all. Ms Chee merely referred to URA, *Property Market Information (Commercial & Industrial Properties)* (2nd Quarter 2001) at p 11 for the index in respect of "shop space". She should have noted the statement at p xii under *Shop Space* in the section on *Concepts and Definitions* that "[shop space] excludes shophouses, coffee shops, restaurants and health centres." The index she referred to was wholly inappropriate.

(15) To determine the market value of 189A Ms Chee referred to the following transaction:

<i>Location</i>	<i>Contract Date</i>	<i>Price Floor Area Rate</i>	<i>Floor Area</i>
191A Paya Lebar Road	April 1996	\$392 000 \$3 681/sm	106.5 sm

As noted above 191A is the second storey unit above 191 and it is comprised in a separate strata certificate of title and unlike 189A it is capable of independent dealings which require registration. The transaction referred to was a sale by a mortgagee in exercise of its power of sale.

(16) Ms Chee made an adjustment of +10% for mortgagee sale. She also made adjustments of -32% for time and -5% for size for a total of -27%. This gave an adjusted floor area rate of \$2 687/sm for a market value of about \$411 000. It was not disputed that the floor area of 189A was 153.03 sm. Adding this to the market

value of 189 of \$855 000 the market value of the acquired land would have been \$1 266 000 but Ms Chee added \$20 000 for the value of improvements making a total of \$1 286 000 which she rounded down to \$1 285 000 for the market value of the acquired land as at the acquisition date.

Comparables

(17) Ms Kwang referred to the sales of 33/35, 400 and 410 Upper Paya Lebar Road ("33/35, 400" and "410") for the market value of 189 on the basis of its existing use. 33/35 is not one building but two adjoining buildings on separate plots of land with site areas of 169.9 sm and 125.4 sm. 33 is a corner terrace building. 400 and 410 are intermediate terrace buildings. They are all single storey buildings and the sites have been developed to a gross plot ratio ("GPR") of about 0.8 to 0.9 only. No evidence has been adduced as to the Master Plan use or as to the permitted use or as to planning proposals for future development if any. No evidence has been adduced as to the maximum permissible GPR of any development. There were no site plans. Apart from photographs of the sites and copies of the transfers and title searches there were no materials on the basis of which any sufficiently meaningful analysis of the prices paid on the sales could be carried out. On the evidence it cannot be said that the prices paid on the transactions had been paid on the basis of the existing use (or in anticipation of the continued use for the purpose designated in the Development Baseline whichever was lower) and in particular that no account had been taken of the potential value of the sites for any more intensive use.

(18) Ms Chee was referred to the transactions involving these properties. She made adjustments of -50% for 33/35 and -40% for 400 and 410 for location. She also made other adjustments and came to an average market value of about \$947 000. This is about \$92 000 more than her valuation by reference only to the sale of 191. She did not make any reference to planning or development considerations either. She did not give any evidence of sales from which adjustments for location might be determined. Ms Kwang's valuation was about \$1 700 000 within the range of about \$1 497 000 to \$1 738 000.

(19) Ms Kwang was referred to the sale of 191. She made the same adjustments for site area, floor area and walkway and for double frontage as Ms Chee but where she differed was she made no adjustment for time. The sale of 191 was in July 1994. That was nearly 7 years before the acquisition date but that is not by itself a sufficient reason to exclude the sale from consideration. It was less than 6 months before 1 January 1995 and it is common ground between the parties that the market value as at the acquisition date was lower than as at 1 January 1995. 191 is the first storey of the intermediate shop-house in the same terrace block of three shop-houses of which the acquired land is one of the corner units as noted above and as at the acquisition date its existing use was also as an eating house with a residential flat above it although there is no evidence that it was used as an eating house at the time of the sale. On the evidence it appears that the locational and use factors which lead to price differentials are nearly the same. Without making any adjustment for time Ms Kwang came to a market value of about \$1 100 000. Ms Chee's valuation was about \$855 000.

(20) For the market value of 189A Ms Kwang referred to 7B Lorong 31 ("7B"), 7D Lorong 39 ("7D"), 28C Lorong 30 ("28C") and 9B Lorong 15 ("9B") all in Geylang. As noted above these were not apartments over an eating house. No adjustments were made for floor area although the floor area of 189 is 153.03 sm while the floor areas of the reference properties ranged from 104 sm to 122 sm only. No adjustments were made for location.

(21) Ms Chee was referred to these transactions. She made an adjustment of -20% for location and certain other adjustments for time, size, situation (whether over shop or over apartment) and came to an average market value of about \$400 000. This is about \$11 000 less than the market value which she determined by reference only to the sale of 191A. Ms Kwang's valuation was about \$600 000.

(22) Ms Kwang was referred to the sale of 191A. Surprisingly the adjustments she made were not very different from those made by Ms Chee. She came to a market value of about \$413 000 as against \$411 000 as determined by Ms Chee.

(23) 189 and 189A were at the acquisition date comprised in one document of title and could not be sold separately. A buyer of 189 had to buy 189A as well and having bought it he could not resell it without reselling 189 as well. 191 and 191A were comprised in separate documents of title and were capable of being dealt with separately. This is a significant difference but it appears that the difference has not been appreciated by those advising the parties. No evidence has been adduced as to the action which could have been taken to have separate titles for 189 and 189A and the expenses which would have to be incurred to bring this about. No evidence has been adduced as to the price differential that may be attributed to this difference although the parties recognise that some negative adjustment should be made for this difference.

Market Value

(24) On the evidence adduced and the facts agreed this Board finds:

- (a) that for the purpose of s 33(1)(a) the market value of the acquired land was the lowest as at 28 April 2001;
- (b) that the market value of the acquired land as at 28 April 2001 was \$1 360 000;
- (c) that the market value so found does not exceed the Development Baseline use price or the existing use price determined in accordance with s 33(5)(e).

Injurious Affection, Reasonable Expenses

(25) Section 33 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:

...

(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, 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, if any, incidental to that change

As noted above no ground is alleged in the petition of appeal for the additional amount of \$711 472 over and above the market value of the acquired land but the valuation report annexed to the appellant's affidavit has this statement:

(b) Cost incurred in renovation	\$20,000
(c) Stamp duties to be paid for the purchase of alternative premises for the same purpose	\$63,600
(d) Legal fees paid for the purchase in (c)	\$12,000
(e) Removal cost to be incurred	\$10,000
(f) [Loss] of goodwill	\$590,872
(g) Professional fees incurred as a result of this pending acquisition	\$15,000

In the original valuation report item (a) refers to the market value of the acquired land. Except for item (f) which is claimed as damage for injurious affection under s 33(1)(d) all the other items are claimed as expenses under s 33(1)(e).

(26) The appellant has incurred \$19 384 in legal fees and stamp duties in the purchase of alternative premises at 125 Upper Paya Lebar Road for \$800 000 to continue the business which as at the acquisition date was carried on (and is still carried on) at 189. The Collector concedes that these are reasonable expenses which may be taken into consideration under s 33(1)(e) as expenses incidental to the appellant's change of place of business and this Board will take these expenses into consideration as such expenses but without deciding the point (which is expressly reserved) as it has heard no argument on it. That disposes of items (c) and (d) of the appellant's claims.

(27) If item (b) refers to renovation in respect of the acquired land then it can have no basis to be one of the matters to be taken into consideration under s 33(1). The renovation can of course add value to the acquired land but there is no evidence to suggest that in the approach to the valuation of the acquired land adopted by the appellant's valuer the value of the renovation has to be accounted for separately and added to the value of the acquired land as if it had been determined without renovation. Curiously the Collector's valuer allowed \$20 000 for improvements to be added to the value derived from an analysis of the sales of 191 and 191A but there is no evidence that there were any improvements which had to be taken into consideration. There is no evidence that the renovation is in respect of any other premises. On the evidence there is no matter to be taken into consideration under item (b).

(28) The appellant must incur some expenses incidental to the change of place of business. Her evidence is that she intends to continue her business and this Board

finds accordingly. She has a well known business and she has bought alternative premises. \$8 000 is said to be for moving her equipment to the new premises and \$2 000 for giving notice to her customers. There is no evidence as to the equipment to be moved or as to the associated charges. There is no evidence as to the charges for giving notice of change. Mr Goh of counsel for the Collector submitted that nothing should be allowed but this Board cannot agree. What this Board has to do is to take into consideration the reasonable expenses incidental to the change and having taken such expenses into consideration and on the evidence such as it is this Board will allow \$2 000 as compensation under this item.

(29) By far the largest claim is for loss of goodwill. Mr Ng of counsel for the appellant said that *goodwill* was the appellant's *other property* which was injuriously affected by reason of the acquisition. The appellant said that it was her auditor who told her about the loss of goodwill. Ms Kwang also said that it was the appellant's auditor who told her about it. The auditor did not testify. No financial statements were produced. Goodwill in the context of the appellant's claim may mean the probability that her customers will return and in this sense loss of goodwill may mean loss of profits attributable to the customers not returning as a result of acquisition and the change of place of business. Loss of goodwill understood in this sense is not a necessary consequence of acquisition. If *loss of goodwill* was used in some other sense no evidence has been given either to explain it or in support of it and counsel has not been able to offer any assistance to this Board. In the decision of this Board this claim has not been made good and there is accordingly no matter to be taken into consideration under item (f).

Award

(30) The appellant is compelled to change her place of business in consequence of the acquisition. There will be expenses incidental to such change. After taking into consideration the market value as at 28 April 2001 and the reasonable expenses incidental to the change of place of business this Board determines that the amount of compensation to be awarded for the acquired land is \$1 381 384. This exceeds the amount of the Collector's award and this Board orders that the Collector pay to the appellant the excess together with interest at the rate of 6% per year from the date of taking possession to the date of payment.

Costs

(31) For the purpose of the inquiry held under s 10 the appellant made a claim of \$3 011 472. This was a claim made pursuant to the Collector's notice under s 8 and as it exceeds the amount awarded by this Board by more than 20% the appellant is not entitled to her costs.

Dated 2002 September 23

Commissioner of Appeals T Q Lim
Assessor Chung Fatt Yat
Assessor Chua Koon Hoe
2001.052Decision(2)