

LAND ACQUISITION ACT

APPEALS BOARD

AB 2005.065

In the Matter of the Acquisition of Land at  
Strata Lot U27296V of Mukim 24  
Block 8 Upper Boon Keng Road #01-1066

Between

McDonald's Restaurants Pte Ltd

... Appellant

And

Collector of Land Revenue

... Respondent

Mr Mirza Namazie and Mr Chua Boon Beng for Appellant  
Mr Abdul Rashid for Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue ("Collector") of compensation in an amount of \$4 151 700 and apportionment of the same as to \$4 146 700 to Deh Lee Yit and 3 others (together "Dehs") and as to \$5 000 to the appellant for the land at Strata Lot U27296V of Mukim 24 comprised in registered lease I/HB34706W be confirmed;

And

(2) That the costs of the appeal to this Board fixed at \$20 000 be paid by the appellant;

And

(3) That the deposit paid by the appellant be paid out to the Collector to account of costs.

## BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

### *Appeal*

(1) On 2001 March 22 ("acquisition date") a notification No 686 was published in the *Gazette*. The notification stated:

#### DECLARATION UNDER SECTION 5

It is hereby declared that it appears to the President that the pieces of land situate in MK 24 ... which pieces of land are more particularly described in the Schedule hereto are needed for a public purpose, viz.: SELECTIVE EN BLOC REDEVELOPMENT SCHEME - UPPER BOON KENG ROAD.

The Schedule included this:

<i>Lot No</i>	<i>MK/TS</i>	<i>AREA IN SQ M</i>		<i>OWNER**</i>
5506	MK 24	1 666.4		HDB
<i>Strata Lot</i>	<i>Name of Lessee</i>	<i>Chargee</i>	<i>Mortgagee</i>	<i>Caveator</i>
U27296V	[the Dehs]	ICB		

\*\* Person who from available information in the Singapore Land Registry are believed to be owners (*sic*).

The declaration went on to say when and where the plan could be inspected and that the declaration was made under s 5 of the Act.

(2) Section 5 provides:

(1) Whenever any particular land is needed -

(a) for any public purpose;

...

the President may, by notification published in the *Gazette*, declare the land to be required for the purpose specified in the notification.

And s 6 provides:

Upon the publication of a notification under section 5 (1) declaring that any land is needed for the purpose specified in the notification, the Minister or an officer authorised by the Minister in that behalf shall direct the Collector to take proceedings for the acquisition of the land.

The Collector derives his authority to take proceedings for the acquisition of the land from the direction made under s 6 and such a direction can only be made upon the publication of the notification under s 5(1).

(3) In some cases it may appear that a particular land is likely to be needed but some preliminary investigation may have to be undertaken before a decision is taken. To address such cases s 3 provides:

(1) Whenever it appears to the President that land in any locality is likely to be needed for any purpose specified in section 5(1), a notification to that effect shall be published in the *Gazette* ... and thereupon any officer either generally or specially authorised by the Minister in that behalf and his servants and workmen may -

- (a) enter upon and survey and take levels of any land in that locality;
- (b) dig or bore into the soil;
- (c) do all other acts necessary to ascertain whether the land is suitable for such purpose ....

Acquisition does not begin with the publication of a s 3 notification. The Collector will not be directed to take any proceedings for the acquisition of any land following the publication of such a notification alone. The notification ceases to have any effect 12 months after its publication (see sub-section (3)) and it may or may not be followed by a s 5 declaration.

(4) The notification that was published in the *Gazette* was in form a s 3 notification but with one exception. It stated that it *appeared* to the President (following the terms of s 3) that the land was *needed* (but not *likely to be needed* as provided in s 3). It was clearly not in form a s 5 declaration. It did not state that the land was *needed* and it did not declare that the land was *required* as provided in s 5. It only declared that it *appeared* that the land was *needed* and it went no further. However the parties are agreed that for the purpose of this appeal the notification published in the *Gazette* on the acquisition date is to be treated as a notification of a declaration made under s 5. The acquisition date was more than 5 years ago and the Collector has taken proceedings purportedly under s 6 for the acquisition of Strata Lot U27296V and a very large number of other lands comprised in the declaration and in the circumstances of this case this Board agrees that the notification may be treated as a notification of a declaration under s 5 for the purpose of this appeal.

(5) It is not in dispute that as at the acquisition date the Dehs were lessees of HDB in respect of Strata Lot U27296V under registered lease I/HB34706W for a term of 87 years commencing from 1992 July 1 ("Dehs lease") and the appellant was a sub-lessee of the Dehs under a lease dated 1997 October 3 for a term of 15 years commencing from 1996 August 15 ("McDonald's lease") and both the appellant and the Dehs are persons interested. The appellant in turn sub-let part of Strata Lot U27296V to Ong Sok Eng for a term of 3 years commencing 2001 May 1 (which is after the acquisition date) under a lease dated 2001 January 5 (which is before the acquisition date) and she entered into possession. She would have been a person interested also but it does not appear that she has claimed any interest in compensation. Only the Dehs and the appellant claim interests in compensation on account of the acquisition.

(6) For the purpose of the inquiry held under s 10 the Dehs submitted a claim to compensation of \$4 400 000 and the appellant submitted a claim to compensation of \$691 899. By an award dated 2005 October 18 the Collector awarded compensation of \$4 151 700 for the land and apportioned it as to \$4 146 700 to the Dehs and as to the balance of \$5 000 to the appellant. Neither Ong Sok Eng nor any other person was treated as a person interested and there was no apportionment of the compensation among any persons other than the Dehs and the appellant.

(7) The appellant appeals against the award. At the hearing its petition of appeal was amended by including a claim of \$261 000 as the relief claimed. Mr Namazie said that this was made up of (a) \$168 000 for depreciated value of tenant's improvements, (b) \$88 000 for "loss of profit rental" from permitted sub-letting, and (c) \$5 000 for reasonable expenses. The relief claimed was later further amended to \$263 000 by an amendment of the depreciated value of tenant's improvements to \$170 000. Mr Namazie said that what the appellant sought by this appeal against the Collector's award was an increase in the compensation for the acquired land from \$4 151 700 to \$4 409 700 and an apportionment of the increased compensation as to \$4 146 700 to the Dehs and \$263 000 to the appellant. There was to be no change in the amount of the apportionment to the Dehs. The Dehs have not appealed and they are not and have not been made parties to this appeal although they are acknowledged as persons interested.

#### *Acquired Land*

(8) Block 8 at Upper Boon Keng Road is a 12 storey HDB slab block on the site of Lot 5506 with commercial units on the first storey and residential units on the second to the twelfth storeys. The site is zoned "Residential and Commercial at First Storey Only" in the 1998 Master Plan. Strata Lot U27296V is a first storey eating house unit with an area of 292 sm in Block 8. As at the acquisition date the unit was occupied by the appellant for the purpose of its business as proprietor of a McDonald's Restaurant. Block 8 is part of an HDB mixed residential, commercial and industrial development bounded on the North by Upper Boon Keng Road, on the East by Lorong 1 Geylang, on the South by Sims Avenue and on the West by Kallang River. The Kallang MRT Station is nearby at Sims Avenue.

(9) For some reason not explained to this Board the Collector appears to have given 3 s 8 notices in relation to this acquisition. All the notices, dated 2001 April 9, 2001 July 4 and 2001 November 2 are substantially the same except that the first describes both the Dehs and the appellant as "Owner(s)" and the second describes the Dehs as "Owner" and the appellant as "Sub-tenant" and both describe the acquired land as "*Strata Lot U27296V*" and "*Title I/HB34706W*" which is the Dehs lease. The third notice is addressed to the Dehs and the appellant without any particular description and describes the acquired land as "*Strata Lot U27296V*" without any reference to the title or the Dehs lease. No s 8 notice appears to have been given to Ong Sok Eng although she would have been in possession of part of the eating house unit for the purpose of her business to the knowledge of the Collector by the time the notice dated 2001 November 2 was given. In response to one or more of these s 8 notices the Dehs and the appellant submitted separate claims to compensation as noted above. The Collector's award dated 2005 October 18 describes the acquired land as "*Strata Lot U27296V*" and "*Title I/HB34706W*".

(10) Section 10 provides:

(1) ... the Collector shall proceed to inquire into ... the value of the land and into the respective interests of the persons claiming the compensation, and shall, as soon as possible after the conclusion of the inquiry, make an award under his hand of -

...

(b) the compensation which in his opinion should be allowed for the land; and

(c) the apportionment of the compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether or not they have respectively appeared before him.

This Board has said on a number of occasions before that the Act contemplates one award of compensation for the acquired land and where there are more than one person interested of whom or of whose claims the Collector has information then an apportionment of the compensation among the persons interested. Reference may be made to *Syed Taha bin Salim Albar etc and anor v Collector of Land Revenue* (Decision dated 2002 September 12 in AB 1997.087 at para (10)) and *Prag Narain v Collector of Agra* (ILR 54 Allahabad 286 at p 292) both of which are in the appellant's bundle of authorities.

(11) Both Mr Namazie and Mr Abdul Rashid agree that the acquired land in this appeal is Strata Lot U27296V comprised in the Dehs lease. It is the whole of the eating house unit at Block 8 Upper Boon Keng Road #01-1066 under the Dehs lease. Both Mr Namazie and Mr Abdul Rashid also agree that the persons interested in respect of the compensation to be allowed for the acquired land are the Dehs and the appellant. On the evidence there can be no doubt that the acquired land is Strata Lot U27296V under the Dehs lease and the Dehs and the appellant are persons interested and this Board finds accordingly. It is unnecessary for the purpose of this appeal and this Board makes no finding as to whether or not Ong Sok Eng is also a person interested. The acquired land for which the compensation of \$4 151 700 has been allowed in the Collector's award is Strata Lot U27296V in the Dehs lease.

### *Compensation*

(12) 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;

...

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

...

(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, after taking into account the zoning and density requirements and any other restrictions imposed under the Planning Act 1998 and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other more intensive use ....

No notification under s 3(1) was published and the market value which is to be taken into consideration is the market value as at the acquisition date or as at 1995 January 1 whichever is the lower. The market value will be deemed not to exceed the existing use price or the Development Baseline use price whichever is lower.

### *Petition of Appeal*

(13) The petition states:

Grounds of Appeal:

(i) The Collector's award is manifestly inadequate and unrealistic having regard to the provisions of Section 33 of the Land Acquisition Act (as amended).

(ii) In his grounds of award (SERS), the Collector claims that there is no market value ascribed for the Appellant's interest in the subject premises simply because its valuer opines that there is no enjoyment of profit rent in the Appellant's tenancy in the subject premises. The Collector has erred in arriving at his said decision as under Section 33(1)(a) of the Act, profit rent is not the only

factor in deriving the market value of the subject premises as at 11 March 2001. The market value should indeed comprise or take into account -

- a) profit rent (if any); plus
- b) depreciated value of tenant's improvements; plus
- c) loss of rental from permitted subletting.

The Collector is well aware of the fact that the landlords/owners' claim submitted is exclusive of the value of the Appellant's improvement cost. The original total cost incurred by the Appellant for renovation and improvement works (including all fitting out and installation of kitchen equipment and signage) carried out to the premises concerned was \$974,744.00.

As at 11 March 2001, the Net Book Value (depreciated value) of the Appellant's said improvements/fixed assets as at 11 March 2001 was \$580,000.00 calculated as shown in Appendix I hereto.

Consequent to the acquisition and delivery of possession of the subject premises, the Appellant also suffered loss of rental from permitted sub-letting. The total loss of rent from sub-letting for the balance 10.4 years of the Appellant's lease term is \$354,000.00 computed as shown in Appendix F hereto.

The Collector has erred in not giving any or adequate consideration to the above.

It appears that the principal ground of appeal is that the *market value* should "comprise or take into account profit rent, depreciated value of tenant's improvements and loss of rental from permitted sub-letting" although it is not immediately apparent whether it is a reference to the market value of Strata Lot U27296V under the Dehs lease or under the McDonald's lease.

### *Appellant's Case*

(14) As regards the depreciated value of tenant's improvements of \$170 000 the appellant's case is that the Collector has omitted to take this into account in determining the compensation to be allowed for the acquired land. The appellant says the value of these improvements should be assessed and awarded to the appellant. As regards the "loss of profit rental" of \$88 000 from permitted sub-letting (which presumably is intended to mean "profit rent" or "loss of rent") the appellant's case is that 50.1sm of the total floor space of 292sm under the appellant's lease was sub-let to 2 banks for their ATM machines and to Ong Sok Eng for a total rent of \$8 250/m and the whole of this loss is also to be awarded to the appellant. The remaining \$5 000 is for reasonable expenses under s 33(1)(e) and there is no dispute as to the amount or as to the apportionment of the compensation as to this part wholly to the appellant.

(15) Mrs Lydia Sng a director of Knight Frank Pte Ltd testified for the appellant. She referred to her report dated 2006 June 5. As regards the tenant's improvements she said that she adopted 2006 August 14 as the "cut-off" date because the Collector had indicated that he would take possession of the acquired land in 2006 August/September and until then the appellant would continue to have the use and

enjoyment of the acquired land under its lease. McDonald's lease would expire on 2011 August 14 when the improvements would be written down to nil value. She adopted a "straight line" depreciation and arrived at \$168 000 for the improvements. She revised this to \$170 000 on her analysis of the appellant's ledger entries while she was giving evidence.

(16) Having regard to "prevailing market rents for similar premises in comparable locations" Mrs Sng accepted that the appellant did not enjoy any profit rent in respect of 241.9sm which is the part retained and occupied by the appellant. The appellant paid \$29 800/m head rent for 292sm and she attributed a directly proportionate part of the head rent to 50.1sm sub-let to the 2 banks and to Ong Sok Eng from whom it received in the aggregate \$8 250/m rent. She referred to the difference as profit rent and said the profit rent in respect of the 50.1sm was \$3 140/m. She allowed 30% for vacancy for a net receivable of \$26 373/y. She multiplied this by 3.35 which she said was the "YP for 5 yrs @ 15%" and rounded this down to \$88 000. She appeared to have allowed for a sinking fund but she did not say what rate she adopted for the remainder of the term under the McDonald's lease or whether there was any provision for tax but she was not asked. She said the "loss of rent from profit rent" was \$88 000.

(17) In answer to this Board Mr Namazie said that the compensation to be allowed for the acquired land was \$4 409 700 and that this should be apportioned as to \$4 146 700 to the Dehs and \$263 000 to the appellant. As to the evidence in support of the compensation Mr Namazie said that the only evidence was that which this Board had heard and seen referring to the oral evidence of Mrs Sng and Mr Poon Fook Kuan an accountant and the Vice President of Real Estate of the appellant and to the documents produced during the hearing. Specifically he referred to (a) the Dehs' claim submitted to the Collector, (b) the report of Associated Property Consultants Pte Ltd, (c) the report of Mrs Sng referred to above, and (d) the Collector's grounds of award. As regards the evidence as to apportionment Mr Namazie referred to the evidence of Mrs Sng. He said the Dehs had no interest. He said the whole of the \$263 000 was to be apportioned to the appellant and that the ratio of the appellant's interest to the Dehs' interest was not relevant.

#### *Collector's Case*

(18) The Collector called no further evidence. Mr Rashid was content to rely on the documents before this Board. He referred to s 25(3) which provides that the onus of proving that the award is inadequate shall be on the appellant. Mr Rashid said that where the appeal was as to apportionment then the Dehs should have been brought in as additional respondents. He then referred to s 38(1) which provides -

When the amount of the compensation has been settled and there is any dispute as to the apportionment thereof, the Commissioner sitting alone shall decide the proportions in which the persons interested are entitled to share in the amount.

This is an appeal to this Board and the Dehs have not been brought in. As an appeal in respect of the amount of the compensation allowed for the land the appellant he said had only adduced evidence of tenant's improvements and accordingly this

appeal must fail. He did not specifically refer to the \$88 000 for loss of "profit rental" but the argument would presumably be the same.

(19) Mr Rashid then referred to Khublall, *Compulsory Land Acquisition - Singapore and Malaysia*, (2nd Ed) which has this statement at p 163 -

... the Land Acquisition Act requires the market value of the subject land to be valued not the various interests therein. Thereafter, for the purposes of apportioning the compensation, the various interests, if more than one, will be valued separately. The various methods of valuation discussed above can in general, be employed in valuing various interests as well. Where there are two or more interests subsisting at the same time on the same land, the value of each such interest has to be ascertained in order to apportion the compensation awarded for the land. This will enable an equitable apportionment to be carried out.

He submitted that there was no evidence to enable this Board to determine the amount of compensation to be awarded for the acquired land i.e. for Strata Lot U27296V under the Dehs lease. There was no evidence of the market value of the acquired land. There was also no evidence as to the values of the interest of the Dehs and of the appellant to enable an apportionment to be carried out.

#### *Board's Decision*

##### *Compensation and apportionment*

(20) As noted above the parties have agreed and this Board has found that the acquired land for the purpose of this appeal is Strata Lot U27296V under the Dehs lease. It is the 87 year leasehold interest under this lease. That land is the particular land comprised in the s 5 declaration. The Collector in his award dated 2005 October 18 made an award of the compensation to be allowed for that land. It is against that award that this appeal has been brought. It is the market value and the other matters mentioned in s 33 (and no others) in relation to that land which must be taken into consideration in determining the amount of compensation. See s 33(1). The interests of the Dehs and of the appellant are relevant as regards apportionment of the compensation between them. See Khublall (*op cit*) at p 163.

(21) Khublall (*op cit*) at pp 166, 167 gives an example of apportionment which is quite helpful in the context of this appeal. A freehold shop was let 5 years ago for 15 years at a net rent of \$40 000/y. The full rental value today is \$90 000/y. In the example the writer found that the valuation of the land (adopting the investment method) was \$1 384 600 and this was to be the award or compensation to be allowed for the land. He then proceeded to find that the valuation of the landlord's interest was \$1 032 400 and that of the tenant was \$257 000 (as there was clearly a profit rent enjoyed by the tenant for the remainder of the term). The aggregate of the landlord's interest and the tenant's interest was \$1 289 400. He then found that the compensation was to be apportioned as to  $1\,032\,400/1\,289\,400 \times \$1\,384\,600$  to the landlord and  $257\,000/1\,289\,400 \times \$1\,384\,600$  (which is the balance) to the tenant. It will be observed that the market value of the land is not the same as the aggregate of the values of the landlord's and the tenant's interests and that the ratios of the values of the respective interests to the aggregate value are relevant as to apportionment.

### *Tenant's Improvements*

(22) The claim to compensation submitted by the Dehs contains this statement:

... claim of \$4,400,000.00 with vacant possession for the aforesaid property (Based on prevailing market value for the acquired property as at 11 March 2001 using the comparison method of valuation. N.B. This amount is exclusive of the value of tenant's improvements)

The reference to the "aforesaid property" in the claim was a reference to the acquired land. The Collector awarded compensation of \$4 151 700 for the land and Mr Namazie's argument appears to be that since the Dehs' claim was "exclusive of the value of tenant's improvements" then the value of the tenant's improvements (and the profit rent if any) should be added to the amount of the compensation. This Board cannot agree with that.

(23) The Dehs' claim which is said to be based on the prevailing market value was not supported by a valuation report and if it was the report is not before this Board. If there was any valuation report which the Collector relied on (in determining the amount of the compensation for the acquired land) such report is also not before this Board. The report of Associated Property Consultants Pte Ltd dated 2005 September 25 offers no evidence of any valuation of the acquired land. It was a valuation of the appellant's interest as lessee of the Dehs. The Collector's grounds of award offer no assistance. He appeared to have missed the point altogether and gave no grounds for the award of compensation for the acquired land or of the apportionment but no objection has at any time been taken as to this failure. While the grounds of award such as they are may be silent as to the finding of the amount of the compensation which in the Collector's opinion should be allowed for the land it does not follow that there was no finding of this amount or that the tenant's improvements have not been taken into account. The Collector has made his award and the onus of proving that the award is inadequate is on the appellant. See s 25(3).

(24) Mrs Sng said that the improvements had a depreciated value of \$170 000. In this Board's view the improvements may have added value to the acquired land but it is by no means certain. If they did then they would be reflected in the market value of the acquired land. However Mrs Sng gave no evidence of this market value. She appeared not to have had any instructions to do that. In para 1.0 of her report dated 2006 June 5 she said:

We thank you for your instructions to advise on the claim for compensation for the purpose of appeal against the award issued by the Collector of Land Revenue in respect of your interest as Tenant, arising from the compulsory acquisition.... The subject property was acquired ... under the Land Acquisition Act (Cap. 152) in accordance with Notification No. 686 dated 13 March 2001 and first published in the Government Gazette (Electronic Edition) on 22 March 2001.

The entire report was consistent with the valuation of the appellant's interest in the eating house unit under the McDonald's lease i.e. the 15 year leasehold term and not the valuation of the 87 year leasehold term under the Dehs lease.

(25) Continuing in para 1.0 of her report Mrs Sng said:

We have made the necessary searches and investigations to assist us in our assessment of value and following our inspection of the subject property, are pleased to submit our report and valuation hereunder.

Under cross examination Mrs Sng said that the "subject property" was the McDonald's lease and that she did not at any time at all take into account the valuation of the 87 year leasehold under the Dehs lease which is the acquired land. She gave no evidence of the market value of the acquired land.

*Profit Rent*  
*Loss of Profit Rental*

(26) A leasehold interest, such as the interest of the appellant as tenant of the Dehs under the McDonald's lease, has a value where the full rental value exceeds the contractual rent payable, such as the rent payable by the appellant to the Dehs if that is the case. The difference between the full rental value and the contractual rent is termed "Profit Rent". See Johnson, Davies & Shapiro, *Modern Methods of Valuation* (9th Ed) at p 125 *et seq.*

(27) Mr David Chia who wrote the report of Associated Property Consultants Pte Ltd dated 2005 September 25 said in para 8.0 of the report:

The evidence of lettings of eating houses in 2000 and 2001 provided under Appendix 'B' serve to support that the Contracted Rent of \$102 per square metre per month was above prevailing market rental levels.

The rent payable by the appellant was \$29 800/m for 292sm or approximately \$102/sm/m. Appendix 'B' has these particulars of lettings -

<i>S/N</i>	<i>Property</i>	<i>Floor Area</i>	<i>Monthly Rent</i>	<i>Rate (\$psm)</i>	<i>Commencement of Tenancy</i>
1	435A Hougang Av 8 #01-01	323sm	\$27 100	\$84	2000 May 1
2	43 Bendemeer Rd #01-1000	220.74sm	\$8 800	\$40	2001 Aug 1 (Tender Date)
3	267A Toh Guan Rd #01-01	402sm	\$37 800	\$94	2001 May 1

The conclusion to be drawn from his report is that there was no profit rent enjoyed by the appellant as tenant under the McDonald's lease.

(28) Mrs Sng said that all these 3 lettings were of inferior properties. Her argument would have proceeded that no inference could be drawn as to the full rental value of the eating house unit at Strata Lot U27296V as at the acquisition date or at least not without making an appropriate adjustment to reflect the differences. In any case she agreed that there was no profit rent in respect of 241.9sm which is that part of the eating house unit occupied by the appellant. Her evidence appears to be that there could be profit rent enjoyed by the appellant in respect of the remaining 50.1sm part.

(29) A leasehold interest where the lessee enjoys profit rent has a value because a purchaser of the lease will be entitled to occupy the property under the lease terms paying a contractual rent that is lower than the full rental value and will be able to sub-let it at the higher rent for a profit. In respect of the 50.1sm part of the eating house unit under the McDonald's lease the contractual rent is not \$29 800/292sm x 50.1sm per month which is what Mrs Sng has assumed for the purpose of her calculation of the profit rent. There is no existing lease for such part of the acquired land the terms of which provide for such rent. There can be no purchaser to be found for a lease that does not exist. The existing lease is for the entire 292sm. If there was a lease of a 50.1sm part concluded at about the same time as the McDonald's lease the reserved rent would have been substantially higher than \$29 800/292sm x 50.1sm per month. As to the remaining 241.9sm retained by the appellant there is no evidence that tenants could be found or permitted under the McDonald's lease and if so at what rent.

(30) The rent receivable for the sub-letting may add value to the McDonald's lease. The appellant pays \$29 800/m for an eating house unit of 292sm part of which it can sub-let for a rent receivable of \$8 250/m and the rest it can occupy under the terms of its lease. Assuming that there are no expenses associated with the rent receivable it may appear that the rent payable under the McDonald's lease is effectively \$21 550/m for 241.9sm or about \$89/sm/m. Under cross examination Mrs Sng said she would think that this was lower than the market rent by comparison with the 3 lettings referred to by Mr Chia. She did not refer to any other comparable lettings. In her calculation of the profit rent she allowed 30% for vacancy. Taking this into account the effective rent would have been much higher than \$89/sm/m. On the evidence this Board is unable to find that there is any profit rent enjoyed by the appellant under the McDonald's lease. Even if there is any profit rent the value of this profit rent cannot be added to the amount of the Collector's award of compensation to determine the amount of the compensation to be allowed for the acquired land. The value of the profit rent if any would be relevant as regards apportionment of the compensation between the Dehs and the appellant.

(31) No competent witness gave any evidence of the market value of the acquired land before this Board. There is no evidence of the market value of the acquired land in any of the documents. There are no materials to enable this Board to determine the market value of the acquired land and there are no materials as to any of the other matters to be taken into consideration in determining the compensation to be awarded for the acquired land.

#### *Grounds of Appeal*

(32) The appellant has not discharged the onus of proving that the Collector's award is inadequate and para (i) of the grounds of appeal fails. Tenant's improvements may or may not have added value to the acquired land but the appellant has adduced no evidence of the market value of the acquired land as at any date at all whether or not the tenant's improvements are taken into consideration. As regards profit rent the appellant has not proved that there was any such profit rent enjoyed by the appellant under the McDonald's lease and even if there was any such profit rent the appellant has not proved that such profit rent or the rent from permitted

sub-letting added value to the acquired land and the appellant has adduced no evidence of the market value of the acquired land as at any date at all. Accordingly para (ii) of the grounds of appeal fails.

#### *Award*

(33) This appeal fails and the award of the Collector dated 2005 October 18 is confirmed.

#### *Costs*

(34) This Board gave the parties an intimation of the proposed decision as to the award and the reasons and heard counsel on the question of costs. The proposed decision as to the award and the reasons are substantially the same as in this decision. The failure as regards the Collector's grounds of award has in some way contributed to the course taken in this appeal although the appellant was not entirely without an appropriate option and the hearing has been prolonged over the evidence of Mr Poon. The s 5 declaration was published on 2001 March 22 but the Collector's award was only made on 2005 October 18 and the grounds of award were given on 2006 January 11. Altogether more than 5 years have passed since the acquisition date and having regard to all the relevant circumstances this Board fixes the costs of the appeal at \$20 000 and in accordance with s 32(1) orders that the costs be paid by the appellant and that the deposit be paid out to the Collector to account of costs.

Dated 2006 September 8

Commissioner of Appeals T Q Lim SC  
Assessor Tan Kim Choon  
Assessor Yang Soo Suan