

LAND ACQUISITION ACT

APPEALS BOARD

AB 1999.069

In the Matter of the Acquisition of Land at
Strata Lot 3769-3-B of Mukim 24
209D Upper Paya Lebar Road

Between

Ng Boo Tan

... 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 \$285 000 in respect of the land at Strata Lot 3769-3-B of Mukim 24 be increased to \$309 928;

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 to the date of payment;

And

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

And

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

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 10 December 1998 ("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 Strata Lot 3769-3-B of Mukim 24 ("acquired land") was required for a public purpose. 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 \$800 000 for compensation. The respondent ("Collector") found that the market value as at the acquisition date was \$285 000 and that this was not higher than as at 1 January 1995 and on 9 April 1999 he made an award of compensation in that amount.

(3) The appellant appeals against the award on the ground that the Collector has erred in his determination of the market value of the acquired land. The appellant further claims a sum for reasonable expenses incidental to a change of residence and compensation of \$488 000 in the aggregate.

Acquired Land

(4) Elling Court was a residential development consisting of 15 walk-up flats in two blocks of 3 Storey buildings on land at Lot 3769 of Mukim 24. Lot 3769 was a near rectangular plot of land at Upper Paya Lebar Road on its West side close to its junction with Bartley Road as it was at the acquisition date. The site area of Lot 3769 was 1 681.5sm. One block comprising 6 flats ("front block") was constructed closer to Upper Paya Lebar Road and the other block an "L" shaped building comprising 9 flats ("rear block") was constructed further away to form an open space between the two blocks. Car parking facilities were available in the open space. The acquired land comprised a flat at 209D Upper Paya Lebar Road which was on the 2nd Storey of the rear block of Elling Court together with a 1/15 share of the common property on Lot 3769. The whole of Lot 3769 has also been acquired together with the acquired land.

(5) Since 1983 Elling Court has been adversely affected by road lines drawn by the Land Transport Authority ("LTA") or its predecessors "to safeguard the need to provide road infrastructure to meet the future travel demand" as Mr Quek Teck Beng of LTA said in his letter of 29 November 2001. His evidence is that when a road line has been drawn it does not necessarily follow that the affected land will be acquired. Changes to road proposals may arise and new road lines may be drawn. It is only when the proposals are adopted and a road project is implemented or carried into effect that action will be taken to acquire the affected land under the Act. The owners of land affected by a road line will not know about it unless they obtain what has in recent years come to be commonly called a road line plan ("RLP") and the market may not know of the road line except through the RLP. Any member of the public may purchase a RLP.

(6) A RLP affecting Elling Court was first sold in December 1983. It would have shown a road line ("1983 road line") that affected the whole of the front block of Elling Court. The rear block (where the acquired land was) was not affected. The 1983 road line did not lead to any road project that was implemented. In 1985 another road line ("1985 road line") was drawn in its place but there is no evidence that a RLP showing the 1985 road line was ever sold. It would have affected a larger part of Lot 3769 but still would not have affected the rear block. In May 1995 the Development Guide Plan ("DGP") for Hougang was endorsed by the Minister and the road line for Upper Paya Lebar Road ("1995 road line") was re-drawn. The RLP showing the effect of the 1995 road line on Elling Court was first sold in January 1996. The RLP would have shown a road line that affected not only the whole of the front block of Elling Court but also much of the rear block including the whole of the acquired land.

(7) In the RLP with the 1995 road line Upper Paya Lebar Road was to be widened. Its junction with Bartley Road was to be moved so that the affected part of Lot 3769 would become part of the junction. When the detailed design for the road project was developed new road lines were drawn in 1998 ("1998 road lines"). It would have been before the acquisition date. The 1998 road lines would result in the whole of Lot 3769 being well inside the proposed junction but there is no evidence that a RLP showing the 1998 road lines was ever sold. The s 5 declaration stated that the public purpose for which the acquired land (together with other plots of land) was required was the proposed Bartley Road extension to Tampines Avenue 10. The plan referred to in the s 5 declaration is not before this Board but it would have shown the 1998 road lines. The extension would be from the proposed junction to the East of Upper Paya Lebar Road. That was the use to which the acquired land was to be put whether in the 1995 road line or in the 1998 road lines. The road project was to be implemented and action was taken for the acquisition of the acquired land.

Compensation

(8) 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

No notification under s 3(1) was published. The s 5 declaration was published on 10 December 1998 and it is common ground that the market value as at 10 December 1998 was the lowest and it is the market value of the acquired land as at 10 December 1998 that among other matters has to be taken into consideration in determining the amount of compensation to be awarded.

Petition of Appeal

(9) In para (e)(5) of the amended petition of appeal the appellant says:

The Collector has erred in law in using as comparables transactions of properties which were affected by road reserve lines at the time of those transactions.

It is not disputed that "road reserve lines" is a reference to "road lines" referred to in Mr Quek Teck Beng's letter. The appellant's case in the main is that the principle of law commonly referred to as the *Pointe Gourde* principle (in its operation in reverse) ("*Pointe Gourde* principle in reverse") is part of the law of Singapore and accordingly the "valuation of the subject property must ignore any decrease in value owing to the drawing of road reserve lines by the LTA across the subject property."

(10) This Board having heard the evidence and made such findings of fact as are necessary for the purpose then stated a case for the opinion of the Honourable Court of Appeal by Case Stated dated 7 March 2002 and the Honourable Court of Appeal (Yong Pung How CJ and Tan Lee Meng J, Chao Hick Tin JA dissenting) by its judgment dated 31 July 2002 said at paras 62, 63:

62 At the conclusion of the case stated, the Commissioner had posed several questions for resolution by the Court of Appeal, which we paraphrase as follows:

- (1) Is the *Pointe Gourde* principle in reverse part of the law of Singapore?
- (2) For the purpose of determining the amount of compensation or market value, should the loss of value of the acquired land attributable to
 - (i) the publication of a s 3(1) notification (if any),
 - (ii) the scheme,
 - (iii) the 1983 road line, or
 - (iv) the 1995 road line

be compensated for?

63 We would accordingly reply both questions in the negative. The *Pointe Gourde* principle in reverse finds no application under the Land Acquisition Act, and in determining the market value and compensation accruing to the landowner, no elements of any loss of value caused by the process of acquisition need to be artificially compensated for.

(11) The *Pointe Gourde* principle in reverse is not part of the law of Singapore and the appellant fails in this part of her case. As at the acquisition date the acquired land was adversely affected by road lines and it is neither wrong in law nor wrong in fact as a principle of valuation to refer to transactions in respect of properties which were similarly affected by road lines at the time of the transactions by reason only that they (the reference properties) were then so affected.

Market Value

(12) Ms Chua Beng Ee of the Inland Revenue Authority of Singapore testifying for the Collector referred to the following transactions:

	<i>Property</i>	<i>Year Built</i>	<i>Floor Area</i>	<i>Consideration/ Floor Area Rate</i>	<i>Contract Date</i>
1	273 Upper Paya Lebar Rd ("273")	1959	114sm	\$300 000 \$2 632/sm	Sep 1995
2	273A Upper Paya Lebar Rd ("273A")	1959	114sm	\$300 000 \$2 632/sm	Jan 1996
3	207B Upper Paya Lebar Rd Elling Court ("207B")	1964	101sm	\$250 000 \$2 475/sm	Nov 1996

She explained that she obtained the market value of the acquired land from the first of these transactions after making adjustments for time and for differences in physical features and that the transaction in respect of 207B which was in Elling Court itself was only referred to as a check. Ms Chua referred to the Property Price Index for apartments in the North East planning region in URA, *Price & Rental Indices (4th Quarter 1998)* ("PPI" for 4th Quarter 1998) (which showed a fall of about 29% from the 3rd Quarter of 1995 to the 4th Quarter of 1998) and allowed an adjustment of -10% for time to derive a base value of \$270 000. She allowed \$5 000 for improvements and \$10 000 for corner unit and windows for a market value of \$285 000. 273 was at the acquisition date also adversely affected by road lines as the parties agree.

(13) For the appellant it was contended that the dates of the transactions were too remote and that adjustment factors would not be accurate when applied over such a long period of time. The relevant dates in this case are 1 January 1995 ("statutory date" where the acquisition date is 27 September 1995 or later) and the acquisition date (10 December 1998). The transactions took place between September 1995 and November 1996 and presumably there could have been no objection for length of time to refer to these transactions to determine the market value as at 1 January 1995. For the appellant there could have been no objection for length of time to determine the market value as at the acquisition date either since it has been agreed that the market value as at the acquisition date is lower than as at 1 January 1995. In the decision of this Board the reference transactions are not objectionable for length of time. This Board has addressed the objection as it is stated and while the period of time is really not long in this case what is relevant is not the length of the period of time itself but the changes in the circumstances which have a bearing on the price but there is no evidence of such changes in that time.

(14) It was also contended that the first transaction in September 1995 (the date of the contract was 18 September 1995) reflected the market value as at 1 January 1992. Prior to December 1995 the statutory date where the acquisition date was 18 September 1995 was 1 January 1992. The argument appears to be that since the property was adversely affected by a road line the price would reflect what the buyer might receive by way of compensation in the event of acquisition and to determine such compensation the market value to be taken into account could not exceed what it was on 1 January 1992. 273A was transacted in January 1996 and the price would by the same argument reflect the market value as at 1 January 1995 the statutory date where the acquisition date is after 27 September 1995. It was transacted at the same price as 273. This Board finds that the first reference transaction is not for the reason advanced for the appellant objectionable.

(15) It was finally contended that the adjustment factor for time adopted by the Collector was arbitrary. Ms Chua referred to PPI for the relevant period which showed a fall in price of about 29% but she adopted 10%. The appellant does not contend that an adjustment of -29% should instead be allowed for time. Her case appears to be that there should be no adjustment for time as there was no proper basis for doing so.

(16) PPI offers a guide as to the movement of prices over time but is not a substitute for an adjustment factor derived from an analysis of comparable transactions at the relevant dates for which there is in this case no evidence. In this appeal the acquired land is land that is adversely affected by road lines but PPI is derived from transactions of all apartments, whether or not affected by road lines, in the planning region and "the price index of each Planning Region is the weighted average of the sub-indices of selected groups of districts" into which each planning region is divided and "the grouping is selected on the basis of frequent transactions". See PPI for 4th Quarter 1998 at p iv. Not a single transaction at a price of \$3 000/sm or less in the 4th Quarter of 1998 or the 1st Quarter of 1999 for any apartment in the North East planning region was included in any such grouping. See Table 2.4 of PPI for the respective Quarters. There have been significantly less frequent transactions involving apartments in the rear block of Elling Court after January 1996 when the 1995 RLP was first sold to the public. On the evidence this Board is not satisfied that an adjustment for time of -10% should be allowed on the basis of PPI.

(17) Mr Ng Chun Sing was the purchaser of 273 in the first transaction. Testifying for the appellant he said that he was informed that the property was adversely affected by a road line and that buyers would not be able to use their CPF savings or obtain a bank loan to finance the purchase. He said the sellers were siblings who did not get along with each other and he was prepared to offer what he thought was below the market price. He said he took into account the advice he received that if the property was acquired he "would be given compensation equivalent to the market value at 1 January 1992". It was contended for the appellant that the price at which 273 was transacted does not reflect its market value then.

(18) It might have appeared to Mr Ng that the sellers did not get along with each other and to have been anxious to sell but as he himself testified the property was adversely affected by a road line. It was more likely to be acquired than if it was not

so affected. It should come as no surprise that the sellers should be anxious to sell and the more so if they should find a ready buyer or a person who appeared to be ready to buy as he was but the sellers themselves have not given any evidence. If there was any anxiety to sell it was not necessarily personal to the sellers. It was more likely to be the consequence of a characteristic of the property itself i.e. of the property being adversely affected by a road line. The sale and purchase was subject to the condition that the buyer was aware of the road line and that he would "not make objection thereto and shall complete the sale and purchase without any reduction [or] abatement of the purchase price". This Board has considered the whole of the evidence including the evidence of Mr Ng and finds that the price at which 273 was transacted did reflect its market value then.

(19) Mr Tay Kian Soo was the purchaser of 273A in the second transaction. Testifying for the appellant he said that before the purchase he lived at 279 Upper Paya Lebar Road ("279") which was in the same block of apartments as 273 and he learned that his friend and neighbour of 15 years who lived at 273A wished to sell his apartment for \$380 000. After some negotiation the price was agreed at \$300 000 and the terms of sale agreed included the following:

2 The Purchaser shall pay to the Vendor the purchase price in instalments as follows:-

- (a) Upon the signing of this Agreement ... \$30 000;
- (b) On or before [1 February 1996] ... \$60 000;
- (c) On or before [4 March 1996] ... \$60 000;
- (d) On or before [18 March 1996] ... \$60 000;
- (e) On or before [15 April 1996] ... \$60 000;
- (f) On or before [30 April 1996] ... \$30 000. ...

8 The said property is sold with vacant possession to be delivered on 31 December 1996 or earlier at the Vendor's option subject to the Vendor paying to the Purchaser rental at the rate of \$1 000 per month from the 1st day of May 1996.

It was urged upon this Board that these were special terms and that accordingly the price does not reflect the market value of 273A.

(20) Where an agreement for sale and purchase is signed between the seller and the buyer (as opposed to the more usual practice of the seller giving to the buyer an option to purchase in consideration of the buyer paying to the seller say 1% of the price) the usual terms of payment of the price would provide for payment of a deposit of 10% on signing the agreement and of the balance within a period varying from one month to 12 weeks. The length of time is usually tied to the time it takes for loan arrangements to be made and documented. In this case the buyer had about 13 weeks to complete the payment of the instalments. Some buyers might have found these terms more favourable and some less so but there is no evidence to show that a buyer would be more willing to pay a higher price or a lower price given these terms of payment.

(21) The seller was given 8 months from the due date of payment of the last instalment to give vacant possession. For that he had to pay \$1 000/month giving

the buyer a rate of return on investment of 4%/year. This is really not remarkable. Mr Tay was living with his parents at 279 which is in the same apartment block. There is no evidence of any pressing need to take physical possession of the property on payment of the last of the instalments. The seller had purchased another property to live in and needed time to carry out additions and alterations. On the evidence including the whole of the evidence of Mr Tay this Board finds that the price at which 273A was transacted in the second transaction does reflect its market value then.

(22) Ms Tay Gim Choo Angela testifying for the appellant said that she was the marketing executive with Chane Realty Pte Ltd who "helped to broker the sale of [207B]" in the third transaction. The seller was a Malaysian and Ms Tay said she was informed by Ms Seah Ah Lan Karen who was also a property agent that the seller was in a hurry to liquidate his investment in Singapore and that he was planning to return to Malaysia and was willing to sell at a low price. Neither Ms Seah nor the seller gave any evidence and this Board will not admit such hearsay evidence notwithstanding its powers under s 25(4)(d). Ms Tay said that she introduced this property to one of her clients a director of Teck Bee Engineering Pte Ltd and that "Teck Bee was searching for cheap accommodation to house their foreign workers". Ms Tay also said that "after several rounds of negotiations [she] obtained an offer to sell [207B] for \$250 000". It was submitted that this was well below "market values of around \$400 000 at the time".

(23) 207B might have been bought for the purpose of housing the buyer's foreign workers but there is no evidence to show that such a use would result in a lower price being paid for the property than if it had been bought for a different purpose. In any case the buyer is free to use it for any other purpose consistent with its permitted use under the law. The property was cheap not because of the purpose the buyer had intended for it. It was cheap because it was adversely affected by a road line. Ms Tay said as much when she agreed that if it was not adversely affected by a road line it would not be selling at \$250 000. On the evidence this Board finds that the price of the third transaction does reflect the market value of 207B at the time of the transaction although Ms Chua only referred to this transaction as a check.

(24) The appellant relies heavily on her own purchase in April 1999 of 319A Upper Paya Lebar Road ("319A") for which she paid \$465 000. 319A was not at any time at all affected by a road line. It was obviously not a comparable transaction and no inference can be drawn from that transaction or any others in respect of the apartments in the same block as to the probable price or market value of the acquired land as at the acquisition date.

(25) The appellant's alternative approach as developed by Mr Tang Kok Kong of Henry Butcher Appraisal Group Pte Ltd who testified for the appellant was to take the first two of Ms Chua's reference transactions in respect of 273 and 273A and to assume that the prices reflected the market value as at 1 January 1992. He then referred to PPI for the relevant Quarters and made adjustments of +21% for time and other adjustments for differences and came to an average floor area rate of \$3 816/sm. Applying this to the acquired land and making further adjustments for other differences he came to a value of \$452 000 which he said was the market value of the acquired land as at the acquisition date.

(26) 273 was transacted on 18 September 1995 and if it was acquired immediately after the statutory date would be 1 January 1992 as noted above. However, as noted above also, 273A was transacted in January 1996 by a sale and purchase contract dated 25 January 1996 and if it was acquired immediately after the contract was signed the statutory date would be 1 January 1995 and not 1 January 1992. Further there is no evidence that 273 was transacted at its 1 January 1992 market value. The purchaser said he considered the market value of "around \$350 000 or lower" and this Board has found that the price of \$300 000 reflected the market value of 273 at the time of the transaction. This Board finds that Mr Tang's alternative approach was not supported by the evidence.

(27) On the evidence and the facts agreed this Board finds that the base value of the acquired land as at the acquisition date was \$285 000. To that will be added \$5 000 for improvements and \$10 000 for corner unit and windows for a total of \$300 000 and accordingly finds that the market value of the acquired land as at the acquisition date was \$300 000.

Reasonable Expenses

(28) 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 ...

(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

It is not disputed that the appellant has been compelled to change her residence in consequence of the acquisition. She has bought another flat to live in and has incurred expenses. She claims \$22 211 as follows as expenses incidental to the change of residence which it is submitted have to be taken into consideration:

1	Stamp fees, legal costs and incidental charges incurred for purchase of 319A	\$15 211
2	Retrofitting expenses	<u>\$7 000</u>
		\$22 211
		=====

(29) The Collector concedes that stamp fees, legal costs and incidental charges which would have been incurred in the purchase of alternative accommodation for a consideration not exceeding the market value of the acquired land as found by this Board may be taken into consideration as expenses under s 33(1)(e). This Board has found the market value of the acquired land as at the acquisition date to be \$300 000 and accordingly the expenses would amount to \$8 928. In these circumstances this Board will take these expenses into consideration as expenses under s 33(1)(e) but without deciding the point (which is expressly reserved) as it has heard no argument on it.

(30) The Collector opposes the claim in respect of retrofitting expenses. His case appears to be (1) that the expenses are not proved; (2) that the expenses include the price of new items and some depreciation must be taken into consideration; and (3) that to allow the expenses of retrofitting would be to overcompensate the appellant since it was her case that the market value of the acquired land was the same as what she had paid for 319A and the actual condition of the acquired land had been taken into consideration in the determination of its market value.

(31) The expenses to be taken into consideration must be expenses which are incidental to the change of residence. That is what s 33(1)(e) says. As noted above no submissions have been made to this Board as to what these expenses cover and no authorities have been cited. Khublall, *Compulsory Land Acquisition - Singapore and Malaysia* (2nd Ed 1994) at p 207 gives 5 examples but retrofitting a replacement property is not included. He then proceeds to refer to the English case of *Harvey v Crawley Development Corporation* [1957] 1 QB 485 which was a decision on s 2 (which requires the tribunal to act in accordance with the prescribed rules in assessing compensation) of the since repealed Acquisition of Land (Assessment of Compensation) Act 1919. Rule 2 provided a definition of "value" (which it is mentioned in passing used the expression "willing seller" which found its way into the authorities based on the definition) and rule 6 provided that rule 2 should not affect the assessment of compensation for disturbance. "Disturbance" obviously covers more than mere expense incidental to a change of residence and *Harvey* is not really very helpful. In any case it does not deal with retrofitting a replacement property. Aggarwala, *Compulsory Acquisition of Land in India* (7th Ed 1999) at paras 302 to 307 only discusses expenses of removal and no others notwithstanding that the relevant provision which is *in pari materia* with s 33(1)(e) has been part of the law in India for well over 100 years.

(32) In the decision of this Board the expenses of retrofitting a replacement property are not expenses incidental to a change of residence for the purpose of s 33(1)(e). The appellant did not have to incur the expense or she could choose to incur a lesser or greater expense. She could have bought a replacement property which required little or no retrofitting at all or she could have elected to buy one that was in such a state of disrepair as to require very substantial works to be carried out. A retrofitting expense is capital in nature and when it was incurred it added or should have added value to the property which the appellant bought. The change of residence forced upon the appellant in consequence of the acquisition did not give rise to the expense. It merely provided the occasion for it. In contrast a change of residence does give rise to removal and the expenses associated with it although there may well be cases where no actual expense is incurred in the removal.

(33) The appellant also claims removal expenses and although no evidence of the amount incurred has been adduced this Board is satisfied that some expenses have been incurred and that these expenses have to be taken into consideration in determining the amount of compensation to be awarded under s 33(1)(e). The Collector concedes such expenses up to \$1 000.

Award

(34) This Board has taken into consideration the market value of the acquired land as at 10 December 1998 under s 33(1)(a) and the reasonable expenses incidental to the change of residence under s 33(1)(e) as conceded by the Collector and determines that the amount of compensation to be awarded for the acquired land is \$309 928. This exceeds the amount of the Collector's award and this Board orders that the Collector pay 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

(34) For the purpose of the inquiry held under s 10 the appellant made a claim of \$800 000. 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 October 26

Commissioner of Appeals T Q Lim
Assessor Lim Lan Yuan
Assessor Wong Chak Wai