

LAND ACQUISITION ACT

APPEALS BOARD

AB 2005.063

In the Matter of the Acquisition of Land at  
Lot U35280T of Mukim 24  
3D Paya Lebar Road

Between

Tan Poh Hiang aka Looi Choong

... Appellant

And

- 1 Collector of Land Revenue
- 2 Tan Joon Guan  
(Added by Order of the Appeals Board  
made on 2005 November 11)

... Respondents

Mr Aloysius Wee and Ms Noelle Seet for Appellant  
Mr Leonard Goh for First Respondent  
Mr Steven Lee for Second 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 \$260 212 in respect of the land at Lot U35280T of Mukim 24 be increased to \$270 212;

And

(2) That the Collector apply to the Registrar of the Supreme Court to deposit the balance of the award together with interest at 6% per year from the date of taking possession to the date of deposit in court;

And

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

And

(4) That the dispute as to the apportionment of the compensation between the appellant and the second respondent be referred to the Commissioner of Appeals ("Commissioner") pursuant to s 38(1);

And

(5) That there be no order as to costs as between the appellant and the Collector and as between the second respondent and the Collector.

## BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

### *Appeal*

(1) On 2005 August 11 ("acquisition date") a notification No 2163 was published in the *Gazette* under s 5 of the Land Acquisition Act ("s 5 declaration") declaring that the land at Lot U35280T of Mukim 24 ("acquired land") was needed for a public purpose namely Circle Line Stage 2 Construction. The appellant and the second respondent claim an interest in the compensation on account of the acquisition and are persons interested.

(2) For the purpose of the inquiry held under s 10 the appellant submitted a claim of \$395 000 for market value of the acquired land and \$72 090 for certain costs and expenses for a total compensation of \$467 090. The second respondent submitted a claim of \$400 000 for market value. The Collector found that the market value of the acquired land as at the acquisition date was \$250 000 and he allowed \$10 212 for certain expenses. He took these into consideration and on 2005 September 21 he made an award of compensation in the amount of \$260 212. He awarded the whole of the compensation to the second respondent.

(3) The appellant appeals against the award both as to the amount of the compensation and as to its apportionment between him and the second respondent. In his notice of appeal he claims a "beneficial interest in the whole of [the acquired land]". In his petition of appeal he says among other things that the "compensation award is below the open market value of the [acquired land]" as at the acquisition date. He claims \$395 000 for market value and \$70 050 for costs and expenses. He also claims the whole of the compensation or "such other amount as the Board may award". In his respondent's notice the second respondent says among other things that the Collector's "award in respect of apportionment is correct in law and fact" as (among other reasons) he "is clearly shown to be the legal owner" and "is not holding [the acquired land] on trust for the benefit of the appellant or anybody else".

### *Acquired Land*

(4) Lot 3054L is a near rectangular plot bounded on the East by Paya Lebar Road, on the South and on the West by a service road and on the North by Lots 5459L and 5454T. The site area is 2 298.6sm. The service road to the South separates Lot 3054L from a block of terrace shop-houses at Geylang Road and the service road to the West separates it from a block of conservation terrace houses at Lorong 41 Geylang.

(5) As at the acquisition date there was on the site of Lot 3054L a 5 storey part commercial and part residential building with a 2 storey annexe together commonly known as Hok Kee House. The commercial units were on the 1st storey at 1, 1E, 3, 3E, 5, 5E and 7 Paya Lebar Road ("PLR"). The residential units were on the upper storeys at 1A/D, 1F/J, 3A/D, 3F/J, 5A/D, 5F/J and 7A/D (omitting "I") PLR. The annexe comprised 7 units with a garage on the 1st storey and caretaker's quarters on the 2nd storey at 1K/R (omitting "O") PLR. 1K of the annexe adjoined the main

building at the back of 1/A/D and there was an open yard between 1L/R and the rest of the main building. All the units were comprised in leases for 999y commencing from 1966 January 1. The lessor and reversioner was the proprietor of Lot 3054L. The acquired land was a 5th storey walk-up residential unit at 3D PLR. 3D was comprised in Subsidiary Certificate of Title in Volume 62 Folio 197 for Mukim 24 Lot U35280T and the subsidiary proprietor was the second respondent. The Collector has taken possession of the acquired land and Hok Kee House has since been demolished.

### *Compensation*

(6) 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, he is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to that change;

(f) if, in consequence of the acquisition, any reissue of title is necessary, the fees or costs relating to survey, issue and registration of title, stamp duty and such other costs or fees which may reasonably be incurred.

No notification under s 3(1) was published and it is not in dispute that the market value was the lowest as at the acquisition date and it is the market value as at this date which is to be taken into consideration.

### *Petition of Appeal*

(7) The petition states:

Grounds of Appeal:

- (i) The compensation award is below the open market value of the property as at 11 August 2005.
- (ii) The comparable properties in the vicinity are transacted at higher prices than the compensation award.

and other grounds all of which relate to the dispute as to apportionment. The costs and expenses claimed include \$12 000 for "enhanced cost to [the acquired land] (about 8 years ago)" and Mr Wee of counsel for the appellant conceded quite properly in the view of this Board that it should not be included. \$50 000 was claimed for "renovation cost of new HDB flat (if granted)" and \$2 000 for "removal cost" under s 33(1)(e) and \$2 050 for "valuation report fees" and \$4 000 for consultancy fees in consequence of the acquisition under s 33(1)(f).

### *Market Value*

#### *Appellant's Valuation*

(8) Mr Tham Mun Keong of Chesterton International Property Consultants Pte Ltd testified for the appellant. He said in his report dated 2005 August 30 that he adopted the direct sale comparison approach in his valuation and he relied on the following 3 transactions.

#### Comparables

<i>Address</i>	<i>Strata Floor Area (sm)</i>	<i>Price (\$)</i>	<i>Floor Area Rate (\$/sm)</i>	<i>Contract Date</i>
1 53A Jalan Tua Kong	126	380 000	3 015.87	2005/05/27
2 492B Changi Rd	107	334 000	3 121.50	2005/05/26
3 303B Tanjong Katong Rd	110	300 000	2 727.27	2005/03/28

He made adjustments for location, size and age/condition and taking an average of the derived values he said that the market value of the acquired land as at the acquisition date was \$400 000.

(9) As at the acquisition date the Circle Line Stage 2 construction works ("CL2 works") were in progress. In relation to these works hoardings were erected within a few metres in front of Hok Kee House in March 2003 and these were still in place after the acquisition date. In April 2004 there was a serious accident at a construction work site at Nicoll Highway ("Nicoll Highway collapse") resulting in the collapse of certain works and loss of life and this was followed immediately by the suspension of the CL2 works. As at the acquisition date the CL2 works had not recommenced yet. Mr Tham agreed that these circumstances (together "CL2 circumstances") resulted in differences between the 3 reference properties and the acquired land and should be taken into consideration and he agreed to an adjustment of -10% for all the 3 transactions.

(10) Ms Loh Chye Ling of the Inland Revenue Authority of Singapore who testified for the Collector said she also adopted the sales comparison method of valuation in her report dated 2005 November 7. She referred to 5 transactions in Hok Kee House units and considered that 2 of these provided the best sales evidence. She said these 2 transactions were "in line with those of similar walk-up apartments in the locality" and she referred to 4 such transactions. When she was referred to the 53A transaction she said there was a vast difference in neighbourhood and an adjustment could be -30% or -40% and would not be meaningful. She made other adjustments also and assuming an adjustment of -30% for neighbourhood for 53A she would have derived a value of \$256 875. Assuming -15% for neighbourhood for 492B and 303B she would have derived values of \$330 399 and \$287 409 from the 492B and 303B transactions. The difference for neighbourhood in Ms Loh's evidence included the CL2 circumstances.

(11) The following table sets out the adjustments. Ms Loh's adjustments are shown below those of Mr Tham.

		Adjustments					
	<i>Neighbourhood</i>	<i>Location</i>	<i>Size</i>	<i>Age/Condition</i>	<i>Total</i>	<i>Floor Level</i>	<i>Adjusted Value</i>
1	53A	+10%	-3%	-5%	+2%	-\$9 000	\$438 278
	-30%	+5%	-3%	-10%	-38%	-\$15 000	\$256 875
2	492B	+5%	-5%	-10%	-10%	-\$6 000	\$402 414
	-15%	Nil	-5%	-5%	-25%	-\$10 000	\$330 399
3	303B	+5%	-5%	-10%	-10%	-\$6 000	\$350 855
	-15%	+5%	-5%	-10%	-25%	-\$10 000	\$287 409

The adjusted values applying Ms Loh's adjustments are slightly higher than the values she gave in evidence as a result of adopting floor areas as found by the Collector. Mr Tham took an average of the derived values to determine the market value. Allowing an adjustment of -10% for the CL2 circumstances and adopting the same method and rounding the average to the nearest \$1 000 the market value of the acquired land would be \$354 000. Applying Ms Loh's adjustments the market value would be \$292 000. It should be noted that Ms Loh's adjustments for neighbourhood is only an assumption and is not derived from any analysis of comparable transactions before and after the CL2 circumstances.

#### *Collector's Valuation*

(12) Ms Loh referred to the following transactions in Hok Kee House units.

		Comparables			
<i>Unit</i>	<i>Floor Area (sm)</i>	<i>Price (\$)</i>	<i>Floor Area Rate (\$/sm)</i>	<i>Contract Date</i>	<i>Floor Level/Remarks</i>
1	7C &				4th Storey

1R	<u>77.0</u> 222.4	365 000	1 641.19	2004 Aug 30	
2 1C	193.2	265 000	1 371.64	2004 Aug 30	4th Storey Mortgagee's Sale
3 1G	145.4	330 000	2 269.60	2002 Nov 25	3rd Storey
4 5F	140.3	490 000	3 492.52	1996 Nov 6	2nd Storey
5 5J	145.4	500 000	3 438.79	1996 Sep 12	5th Storey

*(The floor areas have been re-stated according to the Collector's findings in the relevant appeals and the Floor Area Rate has been re-calculated accordingly.)*

Ms Loh said in her report -

It is submitted that Comparables 1 and 2 within [Hok] Kee House as shown in Table 1 are the best sales evidence for the acquired property as their transactions were closest to the date of acquisition and thus most reflective of the condition and circumstances surrounding the acquired property as at the date of acquisition.

"Table 1" was a reference to the 5 Hok Kee House transactions set out above.

(13) 1R was a garage/quarters annexe unit and 7C a residential unit and the 2 units were together comprised in Lot U35299L and neither unit could be sold separately without the other. To estimate the value of 7C Ms Loh estimated the value of 1R and deducted this from the transacted price. She said there was a dearth of evidence of transactions in properties like 1R and for that reason she adopted the income method. She adopted a yield of 8%/y and a yearly rent of \$9 000 to derive a capital value of \$112 500 which she rounded down to \$110 000 so that the derived value of 7C was \$255 000. From this she took off \$5 000 for the floor level difference and derived a value of \$250 000 for the acquired land.

(14) In respect of the 1C transaction Ms Loh made an adjustment of +15% for size and -\$5 000 for floor level and would have derived a value of \$224 351. The transaction was a mortgagee's sale and she agreed to an adjustment of +10%. The derived value would have been \$249 295.

(15) Ms Loh said that these 2 transactions were in line with those of similar walk-up apartments in the locality and she referred to the following.

#### Ms Loh's Comparables

<i>Unit</i>	<i>Street Name</i>	<i>Floor Area (\$)</i> <i>(sm)</i>	<i>Price</i>	<i>Floor Area Rate (\$/sm)</i>	<i>Contract Date</i>	<i>Remarks</i>
6 47A	Guillemard Rd	83.0	200 000	2 410	2005 Apr 21	2nd Sty Yr Built 1963
7 20A	Lor 22 Geylang	83.8	275 000	3 282	2004 Mar 4	2nd Sty

								Yr Built 1965
8	29C	Lor 34	Geylang	100	232 000	2 320	2004 Nov 5	4th Sty Yr Built 1977
9	28D	Lor 30	Geylang	112	280 000	2 500	2005 Apr 5	3rd Sty (Mortgagee's sale) Yr Built 1968

Adjustments would have to be made for size in each case and for floor level and for time as appropriate.

*Board's Decision*

*(1) Comparables*

(16) Both Mr Tham and Ms Loh have adopted essentially the same method of valuation. They have both attempted to infer from past transactions the price which a bona fide purchaser might reasonably be expected to pay for the acquired land on the basis of its existing use which is as a residential unit ("existing use price"). There is no evidence as to its use for the purpose designated in the Development Baseline or for any other purpose and having regard to s 33(5)(e) the market value is deemed not to exceed the existing use price. Transactions in residential units in Hok Kee House would generally provide the best material from which to infer such price and there are before this Board 4 such transactions (and one transaction in a mixed 2 unit lot) all of which were referred to by Ms Loh in her report. All the other transactions referred to by both of them will also be taken into consideration as they provide a useful guide.

*(2) 7C & 1R PLR*

(17) As noted above 7C was a residential unit but 1R was a garage/quarters unit and both were comprised in one and the same Lot U35299L and had to be sold together. There is no evidence as to the existing use of 1R as at the date of the transaction but the purchaser used the first storey as a store for business purposes and the second storey as living quarters for workmen and it is likely that 1R was bought (together with 7C) not for any use ancillary to the use of 7C as a residential unit but for mixed use. The floor area of 1R is relatively quite substantial. It is 77sm or slightly more than half the floor area of 7C and its different use cannot be disregarded. It is unlikely that the purchaser of 1R and 7C was representative of the most probable buyer of the residential unit 3D or of 3D as a residential unit as at the acquisition date. In the decision of this Board the 1R and 7C transaction is not a comparable transaction.

(18) There is also some difficulty in the way of determining the value of 1R. There is no evidence that there was a market for this type of property as at the acquisition date or at any time before or even after. Ms Loh said that there was a dearth of sales evidence of such units. She has identified no such transaction. There is no evidence that the market (if there was such a market) associated the productivity of properties such as 1R with the income stream. (See para (23) of the Reasons in the Board's Decision dated 2004 August 28 in AB 72001.074 and the work cited.) On the

evidence it is inappropriate to determine the transacted price of 7C by attempting to value 1R by the income method and deducting this value from the price at which 7C and 1R (together as one lot) was transacted.

(3) *1C PLR*

(19) It is not disputed that this transaction is a good comparable. Ms Loh has allowed an adjustment of +15% for size and +10% for mortgagee's sale. In the decision of this Board these adjustments appear reasonable. Ms Loh made no adjustments for the CL2 circumstances as the circumstances were substantially the same as at the acquisition date and this Board agrees.

(4) *Time*

(20) Ms Loh made no adjustment for time but prices of residential units in the Central planning region (as well as in other planning regions) were higher in the third quarter of 2005 than in the same quarter the previous year. The Property Price Index ("PPI") (Urban Redevelopment Authority, *Property Market Information*) was 114.7 for the third quarter of 2004 and 120.9 for the third quarter of 2005. In this Board's decision some account has to be taken of a difference for time. Allowing +15% for size, +10% for mortgagee's sale and assuming an adjustment by the PPI ratio for time will give a value of \$262 770.

(5) *1G, 5F & 5J PLR*

(21) 1G was transacted after the announcement of the CL2 construction but before the hoardings came up and 5F and 5J were transacted even before the project was announced. Mr Tham said he would allow -10% for the CL2 circumstances. In respect of the 53A transaction Ms Loh said an adjustment for neighbourhood (which included the CL2 circumstances) could be -30% or -40% but for 492B and 303B she allowed only -15%. Both are agreed and there can be no doubt that the effect of the CL2 circumstances is to lower the market value. It may be difficult to estimate the impact of the works on the market value of the Hok Kee House units but it is not impossible to obtain a useful guide.

(22) 1G was transacted in the quarter when the PPI was 110.9 and 5F and 5J were transacted when the PPI was 174.2 and 169.1. Ms Loh said in evidence that for time she would make an adjustment of -50% for both the 5F and 5J transactions and she referred to LCL-60. There was no analysis in that document. All she said there was "Assuming prices in 1996 [were] roughly 2 times the prices as at date of acquisition, then ..." and she proceeded to conclude that "the imputed market values for 3D is thus \$250 000 to \$230 000" after allowing -\$15 000 for floor level for the 5F transaction. She did not refer to any sales comparison or any other market evidence to support her assumption. Assuming an adjustment by the PPI ratio for time the 5F transaction will give a value of \$352 437 and the 5J transaction will give a value of \$357 481. A similar adjustment for time will give a value of \$359 757 from the 1G transaction.

(6) *Floor Level*

(23) From the 1G, 5F and 5J transactions the adjusted values are \$352 437 for the second storey (5F), \$359 757 for the third storey (1G) and \$357 481 for the fifth storey (5J). From the 1G and 5J transactions the difference is about -\$2 276 for 2 storeys higher or say about -\$1 200/floor for each higher floor. Disregarding the difference for time in respect of the 5F and 5J transactions the 5F transaction will give a value of \$507 812 or about -\$7 800 for 3 storeys higher or about -\$2 600/floor for each higher floor. Allowing for the difference in time the effect is reversed. Mr Tham's evidence is that he would allow -\$3 000/floor for each higher floor. Ms Loh would allow -\$5 000/floor. -\$3 000 appears to be more reasonable in regard to residential units in Hok Kee House and this Board finds accordingly.

(24) It may now be convenient to set out in the table below the values derived from the 1C, 1G, 5F and 5J transactions as adjusted for size and mortgagee's sale in respect of the 1C transaction, and for time and floor level in respect of all the transactions.

Adjustments				
<i>Unit</i>	<i>Price (\$)</i>	<i>Value Adjusted For Size, Mortgagee's Sale, Time</i>	<i>Floor Level (\$)</i>	<i>Value Further Adjusted For Floor Level</i>
1 1C	265 000	262 770	-3 000	259 770
2 1G	330 000	359 757	-6 000	353 757*
3 5F	490 000	352 437	-9 000	343 437*
4 5J	500 000	357 481	(Nil)	357 481*

\* Not adjusted for CL2 circumstances

The 1G, 5F and 5J transactions have not been adjusted for the effect of the CL2 circumstances. It appears from the table that the average of the values derived from these transactions before adjusting for floor level (\$356 558) exceeds the value derived from the 1C transaction (which does not have to be adjusted for the CL2 circumstances and before adjusting for floor level) by about 26%. Ms Loh's adjustment of -30% (for the 53A transaction) for neighbourhood which includes these circumstances appears to be more reasonable than Mr Tham's adjustment of -10% but in the circumstances of this case it is not necessary to come to any decision on this. Ms Loh assumed -15% for the 492B and 303B transactions and unless the other neighbourhood considerations are very substantial (as to which there is no evidence) it is difficult to reconcile this with her earlier evidence that it could be -30% or -40% and would not be meaningful.

(7) *Market value*

(25) On the evidence and the facts agreed or not disputed this Board finds:

- (a) that the market value of the acquired land as at the acquisition date was \$260 000; and

(b) that this does not exceed the existing use price or the Development Baseline use price.

(8) *Expenses*

(26) The appellant claims \$50 000 for "renovation cost of new HDB flat (if granted) under s 33(1)(e). No evidence has been adduced as to any HDB flat whether new or otherwise having been "granted" or otherwise made available to the appellant and it has not been submitted to this Board that the appellant or the second respondent has incurred any expense which may be related to such renovation.

(27) The appellant claims \$2 000 for "removal cost". Again there is no evidence of any such expense having been incurred. The acquired land was not his residence as at the acquisition date but that of the second respondent and it was the second respondent who has been compelled to change his residence in consequence of the acquisition. The Collector said in his grounds of award that he took into consideration the reasonable expenses the second respondent would incur in order to vacate the acquired land and he allowed \$10 212 for such expenses.

(28) The appellant further claims \$2 050 for "valuation report fees" and \$4 000 for consultancy fees in consequence of the acquisition under s 33(1)(f). No evidence of such fees has been adduced and this Board has not heard any submission from counsel for any of the parties. It is clear that no reissue of title is necessary or arises in this case at all and the condition for any fees to be taken into consideration has not been satisfied. The acquired land is the whole of Lot U35280T and the interest claimed is such interest as the appellant or the second respondent may have under Subsidiary Certificate of Title in Volume 62 Folio 197 for Lot U35280T. No other land or interest in land is comprised in this lot or in or evidenced by this Subsidiary Certificate of Title.

(29) The parties have agreed and this Board finds that the second respondent has been compelled to change his residence in consequence of the acquisition and that \$10 212 is the amount of reasonable expenses incidental to that change. This will be taken into consideration in determining the amount of compensation to be awarded.

*Apportionment*

(30) The Collector awarded the whole of the compensation to the second respondent. The appellant claims the whole of the compensation or such other amount as the Board may award and the second respondent says that the Collector's award in respect of apportionment is correct in law and fact and there is a dispute as to the apportionment of the compensation. In accordance with s 38(1) the Commissioner sitting alone shall decide the proportions in which the appellant and the second respondent are entitled to share in the amount of the compensation when such amount has been settled.

*Award*

(31) Taking into consideration the market value of the acquired land as at the acquisition date and reasonable expenses incidental to the change of residence this Board determines that the amount of compensation to be awarded for the acquired land is \$270 212. This exceeds the amount of the Collector's award and this Board orders that the Collector apply to the Registrar of the Supreme Court for an order to deposit the excess together with interest at the rate of 6% per year from the date of taking possession to the date of the deposit.

#### Costs

(32) For the purpose of the inquiry held under s 10 the appellant made a claim of \$467 090. 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 his costs in accordance with s 32(4). The second respondent has not appealed the amount of the compensation to this Board and there will be no order as to costs as between the respondents. Costs as between the appellant and the second respondent shall be borne by such of them as the Commissioner may determine in the proceedings for apportioning the amount of compensation.

Dated 2005 December 30

Commissioner of Appeals T Q Lim SC  
Assessor Lim Lan Yuan  
Assessor Chua Koon Hoe

Mr Aloysius Wee and Ms Noelle Seet for Appellant  
Mr Steven Lee for Second Respondent

## DECISION

of the Commissioner of Appeals as to the apportionment of the compensation

### *The dispute*

(1) The amount of the compensation to be awarded for the acquisition of land at Lot U35280T of Mukim 24 together with the residential unit at 3D Paya Lebar Road has been settled and there is a dispute as to its apportionment between the appellant and the second respondent. The dispute has been noted above and is repeated here for convenience. The Collector awarded the whole of the compensation to the second respondent. The appellant claims the whole of the compensation or "such amount as the Board may award". The second respondent says that the Collector's "award in respect of apportionment is correct in law and fact" as (among other reasons) he "is clearly shown to be the legal owner" and "is not holding [the acquired land] on trust for the benefit of the appellant or anybody else".

(2) By an assignment dated 1972 December 29 (Registered in Volume 1932 No 146) ("1972 assignment") Mah Lai Sim who was then entitled to the acquired land ("3D") for the residue of the term of 999 years from 1966 January 1 assigned it to the second respondent and Tan Loon Khoh (together "purchasers") as joint tenants. It was recited in the 1972 assignment that she had agreed to sell 3D to the purchasers for the price of \$20 000 and the assignment was made pursuant to the agreement for sale and in consideration of the payment of the price by the purchasers the receipt of which she acknowledged. Subsequently the second respondent and his family and Tan Loon Khoh moved in and lived there together.

(3) By an indenture or deed of release and assignment dated 1980 May 17 (Registered in Volume 2170 No 106) ("1980 release") Tan Loon Khoh released and assigned the whole of his right title estate and interest in 3D to the second respondent and he moved out to live at an HDB apartment which he had purchased. It was recited in the 1980 release that Tan Loon Khoh had agreed to sell his right title estate and interest to the second respondent for the price of \$45 000 and the deed was made pursuant to the agreement for sale and in consideration of the payment of the price by the second respondent the receipt of which Tan Loon Khoh acknowledged. The second respondent and his family continued to live at 3D until its acquisition.

(4) The appellant said in his affidavit that he paid the purchase price of \$20 000 under the 1972 assignment. He said he arranged for the 1972 assignment to be entered into with the purchasers for the reason that he "wanted to ensure that the property would not be affected should [he] become personally liable for any business failure". The second respondent said in his affidavit that he "was the one who put up the purchase price when 3D Paya Lebar Road was purchased". He also said that "in 1980 Tan Loon Khoh's interest in the property was transferred to [him] for a consideration of \$45 000" and that he paid him the \$45 000.

### *The appellant & his family*

(5) The appellant is now 96 years old. He would have been born in 1909. He has 9 children and the second respondent is the eldest. He was born in 1936 and would now be 69 years old. The other children and their years of birth are Tan Jong Kui, son, born 1940; Tan Yan Toi, daughter, born 1941; Tan Joon Khoh, son, born 1946; Tan Wan Jing, daughter, born 1949; Tan Sui Siang, son, born 1950; Ng Joo Kim, daughter, born 1952; Tan Hong Mui, daughter; and Tan Joon Suah, daughter. Joon Khoh is Loon Khoh who is one of the purchasers under the 1972 assignment. The names of the children and the years they were born were given by the second respondent but there is no dispute in this respect. The second respondent was brought by his mother the appellant's wife to Indonesia where he lived for some years before he came to Singapore. He said the last two children were born after he had left Indonesia and he was not sure of their years of birth. His mother died in 1996.

(6) The appellant and the second respondent were both born in China. The appellant made an affidavit which was interpreted to him in the *Fu Jian* dialect while the second respondent made an affidavit which was interpreted to him in the *Chao Zhou* dialect. At the hearing both gave evidence through interpretation in the *Chao Zhou* dialect.

#### *From China to Singapore*

(7) The appellant said in his affidavit that he left China and went to Thailand "sometime around 1920". He would have been only about 11 years old then. He said he stayed there for 3 years and worked as a shop assistant in a traditional Chinese medicine ("TCM") medical hall which was owned by a relative. He then went to Batam in Indonesia where "he invested in several businesses". He would have been about 14 years old when he went to Batam. He stayed in Batam for "some 20 odd years". He said (and all this is still in his affidavit) that he came to Singapore "around 1950" with the second respondent and that by then he had three children, and he identified them as the second respondent, Jong Kui and Yan Toi. He said his wife remained in Batam with Jong Kui and Yan Toi.

(8) According to his evidence he would have been in Batam between about 1923 and 1943 or for some "odd years" more. He would also have left Batam "around 1950" to come to Singapore. There appears to be a period of some years not accounted for. His son Sui Siang was born in 1950 but apart from him the appellant already had 5 children by then. He said he had three children when he came to Singapore. If he did then he would have left Batam for Singapore between 1941 (when his third child Yan Toi was born) and 1946 (before his fourth child Loon Khoh was born).

(9) Under cross examination the appellant said that after coming to Singapore he subsequently brought his family out from Batam. Initially he came to Singapore by himself. He "checked out" the situation and found that he could make a living and he brought his family out. He said this was one or two years later. When he was asked he affirmed that he brought his whole family out in 1952. Later he said it was his wife who brought them out. He said the second respondent and Loon Khoh came to Singapore together with his wife. In his affidavit he said he came to Singapore with the second respondent as noted above.

(10) The appellant's seventh child Joo Kim was born in 1952 and assuming that she was included in his "whole family" that he brought to Singapore then the two youngest children Hong Mui and Joon Suah would have been born in Singapore or while the family were living in Singapore and not in Indonesia. The two youngest children were not part of the "whole family" that he brought to Singapore.

(11) The appellant said in his affidavit that "during this time" meaning the time between his coming to Singapore in about 1950 and the "one or two years later" in 1952 when he brought his whole family out his "businesses in Batam were managed by [his] second son Tan Jong Kui". Jong Kui was born in 1940 and would have been about 10 to 12 years old "during this time" if the appellant came to Singapore in about 1950 or even much younger if he came when he had only three children as he said.

(12) The appellant went on to say in his affidavit that "[his] businesses did well and that gave [him] a good income for [himself] and [his] family" and that when he had settled down in Singapore he arranged for the whole family to come from Batam. That was in 1952 as he said. Under cross examination he admitted that the family's only business in Batam was that of a provision shop. There was no other business in Batam whether owned by him or his family.

(13) The appellant said in his affidavit that he came to Singapore together with the second respondent as noted above. He said his wife and the other two children remained in Batam. He went on to say immediately after in the next paragraph of his affidavit that "[he] stayed at 47 Rochor Road with [his] family". There was a TCM medical hall there which was owned by a relative and he said he worked there as a shop assistant for \$8/day. I pause to observe that this would have been a very good daily wage.

(14) Under cross examination the appellant said that initially he lived at Lorong 24 Geylang. When the appellant was re-examined he said that when he came to Singapore he worked as a shop assistant at the medical hall at Rochor Road and that he "stayed there". There appears to be some doubt as to whether he ever lived at Lorong 24 Geylang or at 47 Rochor Road with his "family" if he did bring the second respondent out with him from Indonesia or whether he ever worked at the medical hall there.

(15) The appellant said he left Batam to come to Singapore where he "checked out the situation" and found that he could make a living. He also worked as an employee of his relative at the Rochor Road medical hall for \$8/day. When he was asked why he left Batam where his businesses or business did well he said he was "worried there might be riots in Indonesia" and so he left to come to Singapore. It appears that he was quite content to leave his wife and 6 or 7 young children behind one of whom Jong Kui who was not more than 10 to 12 years old was left to manage his businesses or business there.

(16) The appellant said he lived at Lorong 24 Geylang initially as noted above. He said he bought the house there but he could not say when he did that as it was a long time ago. He said he paid for it and the title deeds were in his name. Regrettably title searches were not made or if they were the particulars were not

produced before me. If the appellant lived there initially and bought the house he would more likely than not have bought it before he went to live at 47 Rochor Road. He would have bought it while he was "checking out the situation" and working or even before commencing work as an employee of his relative if in fact he did work there.

(17) The second respondent said in his affidavit that in Indonesia his mother "was running a provision shop" and his father the appellant was "a man of leisure and a gambler" and "he was not at home most of the time". He went on to recount the ill treatment he and sometimes his mother received from the appellant and said that it was a "terrible childhood except for the love and caring of [his] mother". When he was 17 years old he said he heard from people who visited the provision shop that it was easy to make money in Singapore and he decided to come to Singapore. His mother supported his decision and with some money from her he came to Singapore. He said that was "around 1953 when [he] was about 17 years old". He said "[he] left behind [his] parents and [his] 6 other siblings in Indonesia" and his "2 other siblings who were born after [he] left Indonesia".

(18) He said in his affidavit that "[his] life in Singapore started at 'Tong Eng Medical Hall' which was then at 47 Rochor Road" and which "belonged to a relative and [he] took up residence [there] and worked [there]". While working at Tong Eng he was at the same time "doing trading and eventually also did remittance services for which [he] received commissions". He said "money was good and easy to make as long as one was willing to work extra hard" and "[he] managed to accumulate a substantial amount of money". He was not asked but "remittance services" business is commonly understood as the business of receiving money in Singapore and making the equivalent in foreign currency available for the use of the customer overseas probably Indonesia in his case and *vice versa* or performing services related to such business.

(19) Under cross examination he said while he was employed in Tong Eng he did "everything in the shop". He said his monthly wage was \$30 and when he left his last drawn monthly salary was \$35.

(20) He said in his affidavit that when he was in Singapore he was in contact with his mother who visited him "every once in a long while". On one such visit she brought Loon Khoh with her and asked him (the second respondent) "to enrol him in a school in Singapore and take care of him in Singapore". He could not remember when that was but Loon Khoh was then "very young" and "perhaps between 8 to 10 years old". Loon Khoh was born in 1946 and that would have been about 1954 to 1956 or about one to three years after the second respondent came to Singapore. He said they lived together at 47 Rochor Road and he enrolled Loon Khoh at a primary school in River Valley Road. He married in 1960 and later he bought a house at 53 Lorong 24A, Geylang. Loon Khoh lived there with him and his wife.

(21) Loon Khoh was not called as a witness. He attended the Collector's inquiry and represented the appellant who also attended in person. No member of the family other than the appellant and the second respondent testified. No other person was called who might have been able to assist with the evidence.

(22) The appellant is 96 years old as I have noted above and some lapses in his memory would be quite understandable but his evidence was affected not just by lapses in memory. He gave contradictory evidence and appeared confused at times and his evidence was generally unreliable. He contradicted himself as to whether he came to Singapore with the second respondent. The second respondent said he came alone in about 1953 when he was 17 years old and left his parents and his 6 brothers and sisters behind in Batam and I find accordingly. The appellant contradicted himself as to where he lived initially when he came to Singapore. I find as the second respondent said that it was the second respondent who lived at 47 Rochor Road and worked at Tong Eng Medical Hall when he came to Singapore.

(23) I find that the appellant had no business of his own in Batam. The family had a provision shop and this was managed by his wife and it was his wife who brought the family up. The appellant was seldom home. He had no business in Batam or any business there that was managed by Jong Kui between 1950 and 1952 or at any time at all. He had no business there that did well or from which he derived any income for himself or his family. He did not buy any property in Geylang and he did not live in Lorong 24 Geylang.

(24) I find that Loon Khoh was brought to Singapore by his mother when he was only about 8 to 10 years old and he lived at 47 Rochor Road with the second respondent by whom he was brought up from then. He went along to live with the second respondent and his wife after he had bought the Geylang house. His mother visited the second respondent in Singapore more than once in the early years after 1953 but she and the appellant only came out to live in Singapore some time later.

(25) I find that during the time that he worked at Tong Eng the second respondent also did some trading and later remittance services business. He made money and in time he had sufficient savings to buy a house to live in and I find that he bought the house at 53 Lorong 24A Geylang and lived there with his wife and Loon Khoh.

*3E Paya Lebar Road  
Meng Teck Medical Hall*

(26) The appellant said in his affidavit that "sometime around 1963 [he] was looking to purchase a property to move [his] family to and to run a medical hall" and "after some searching [he] found a property at Paya Lebar Road" and that "it was called Hok Kee house". He said "[he] then decided to purchase a flat at Hok Kee House from the developers Success Enterprises Limited". The "flat" was a first storey shop unit at 3E which was then referred to as Flat No 4.

(27) The appellant said he paid the option money of \$1 000 on 1963 July 3, \$4 000 on 1963 December 26, \$19 000 on or about 1965 September 13 and finally \$1 000 on or about 1966 December 3. He produced among other documents receipts from Success Enterprises for each of these payments, the first for \$1 000 originally in favour of a Tan Wee Chen with the name amended to Looi Choong, the next two for \$4 000 and \$19 000 in favour of Looi Choong and one for \$1 000 in favour of Tan Yan Toi and Tan Jong Kui. "Looi Choong" is the name by which the appellant is also known. He said he held a blue Singapore identity card which had his name as Tan Poh Hiang alias Looi Choong when he purchased 3E.

(28) The appellant also produced a copy of a letter dated 1966 August 31 from him to Success Enterprises and Edward Y T Loke an advocate and solicitor by which he agreed and authorised them to have the lease for 3E executed in the names of his son Jong Kui and his daughter Yan Toi as tenants in common in equal shares. As to the reason for having the lease in two of his children's names he said:

I did this because as I was in business, I wanted to ensure that the property would not be affected should I become personally liable for any business failure.

I explained to my son, Tan Jong Kui, and my daughter, Tan Yan Toi, the reason for my action and they understood my intention.

3E has also been acquired as have all the other units in Hok Kee House and an appeal against the award of the Collector is pending.

(29) The appellant said in his affidavit:

Once I got possession of 3-E Paya Lebar Road, I moved my whole family into the property. I also started my traditional Chinese medicine medical hall there under the trading name "Meng Teck Medical Hall". The 2nd Respondent also moved into the property and helped me in the business.

He denied that the initial purchase price was paid by the second respondent.

(30) The second respondent said in his affidavit that when he married "[he] had plans to open up [his] own medical hall business already" and in 1963 he came to know that Hok Kee House was being built. He said there was an office at the site and "[he] went there and put down a \$1,000.00 down payment". He said:

In 1965, 3E Paya Lebar Road was ready for occupation and I therefore moved in and started my own medical hall at 3E Paya Lebar Road. The full payment of \$25,000.00 for 3E Paya Lebar Road was made by me as I had the money and could afford it. I did not take any bank loan.

My medical hall was registered as "Meng Teck Medical Hall" (hereinafter Meng Teck) with me as the sole proprietor.

(31) Under cross examination he said he had no partners in Meng Teck. His wife and his brother Loon Khoh helped out but Loon Khoh was young then. When he was asked if the appellant helped out he said he did not. He said he did not know if the appellant had any experience working in a TCM medical hall but he (the appellant) travelled frequently between Singapore and Indonesia. He said he did not know if the appellant worked in Tong Eng.

(32) The second respondent said in his affidavit:

From the time I opened Meng Teck in 1965, he assisted me in keeping the accounts and reporting taxes and so forth. He had a full time job elsewhere and would do my accounts during the weekends.

"He" was a reference to Hong Kin Soon. He said that in 1965 his sister Yan Toi was already living in Singapore and Yan Toi was married to Hong who was an accountant and a graduate of Nanyang University.

(33) He said he was advised by Hong:

... that I may have a problem with the tax authorities if I put myself down as the owner of 3E Paya Lebar Road as I already had a house under my name in Geylang. He suggested that I put down Tan Jong Kui and Tan Yan Toi's name in the Lease document. I agreed and did so accordingly as I had great respect for Hong Kin Soon's advice as he was a university graduate.

He said his trading business was still very good when he started Meng Teck and he was still "doing trading as well" when he was "running" Meng Teck.

(34) Under cross examination the second respondent said that he paid \$1 000 in cash for the down payment. He said he asked Tan Wee Chen to make the payment and he was not given a receipt. He said the \$25 000 was paid in three instalments. When asked if he had any receipts he said he asked his father to make the payments on his behalf as he was busy in his shop and he had no time and he did not know if his father received any receipts. He was not asked but his shop would have been Tong Eng in Rochor Road until 1965 when as he said he opened Meng Teck.

(35) Sadly Hong has died as I was informed by counsel and Tan Wee Chen was not called to testify. Jong Kui and Yan Toi also were not called.

(36) The lease from Success Enterprises to Jong Kui and Yan Toi is not before me but it is not disputed that 3E was vested in them. The appellant said he paid the price for it. He produced receipts for the payments. When a document was placed before him at the hearing he said he could not see it. When asked when his eyesight started to fail so that he could not see documents his answer was "[he] would say this year". I think the documents such as the receipts would have been put together for him and he would have been told what they were or were supposed to be.

(37) The appellant had no means to start any business. He travelled frequently between Singapore and Indonesia and would not have been able to start any TCM medical hall business on his own and there is no evidence that he had any assistance except that he said the second respondent helped him in the business. The second respondent worked in a TCM medical hall since coming to Singapore as I have found. He had other businesses as well. I think it was the second respondent who started the business of Meng Teck at 3E and I find accordingly.

(38) The appellant had no means to buy 3E just as he had no means to start any business. I think the purchase price came out of the funds of the second respondent's trading and remittance services business and later the funds of Meng Teck and Hong's concern which prompted his advice might have been that the profits might not have been declared or correctly declared for tax purposes. The second respondent already had a house in Geylang in his name. One way of avoiding the "problem with the tax authorities" would have been for the purchaser or purchasers to be other than the second respondent and for the funds to be accounted for as loans to them which were later repaid either from wages or rent or a combination. The

consequence of such an arrangement would be that the purchase price was paid either by the appellant or by Jong Kui and Yan Toi but not by the second respondent. Hong was doing the second respondent's accounts from the time he commenced business as Meng Teck and Hong and his wife Yan Toi themselves bought another unit in Hok Kee House with a loan from the second respondent which was subsequently repaid as the second respondent said.

(39) The legal estate in 3E is vested in Jong Kui and Yan Toi and as between the appellant and the second respondent who are the parties before me I find that the second respondent has not proved that he paid the purchase price. I expressly refrain from finding whether the appellant paid the purchase price from funds to which he was entitled whether as loans taken by him or otherwise as there may well be a dispute between him and the legal owners and they are not before me.

### *3D Paya Lebar Road*

(40) The appellant said in his affidavit that "sometime around December 1972" he found out that Mah Lai Sim wanted to sell her Hok Kee House unit at 3D and he indicated to her that he was interested in purchasing it since "as [his] family members living in 3-E Paya Lebar Road [had] increased [he] wanted to find alternative accommodation within Hok Kee House for them". He said he arranged for the 1972 assignment to be made between Mah Lai Sim and the purchasers (the second respondent and Loon Khoh). He continued:

I had arranged for my sons, Tan Joon Guan [the second respondent] and Tan Loon Khoh, to be the purchasers for 3-D Paya Lebar Road for the same reasons that I had arranged for Tan Yan Toi and Tan Jong Kui to hold 3-E Paya Lebar Road, namely that I wanted to ensure that the property would not be affected should I become personally liable for any business failure. I explained this to Tan Loon Khoh and the 2nd Respondent and they understood my intention.

I gave the instructions to the solicitor Mr Edward Y. T. Loke (who acted for me in the purchase of 3-E Paya Lebar Road) to prepare the Indenture dated 29 December 1972 and to put Tan Loon Khoh and the 2nd Respondent in as purchasers and to hold as joint tenants.

(41) When he was asked under cross examination why he did not put the property in his wife's name he said Loon Khoh was his third son and he loved his eldest son (the second respondent). He said he was thinking of his age. He was worried that it could be troublesome in future. He could not recall how old he was in 1972. He thought it was better to put the property in two names. He said it could be troublesome in future when he was old. When he was asked what he meant by "troublesome" he said if he became old or if he died it could be troublesome as far as "procedures" were concerned. He did not explain what he meant by "procedures".

(42) The appellant said in his affidavit:

I made payment of the purchase price of S\$20,000.00. I have lost the receipt from Madam Mah Lai Sim evidencing payment.

His evidence was that Mah had given him a receipt for the \$20 000 and that he had lost it.

(43) Under cross examination the appellant said he had no documents such as he had produced for the 3E purchase. It was a long time ago and perhaps they had been misplaced. He said he paid the money for the purchase. It was a long time ago and he could not recall if he had any receipts. When it was pointed out to him that this was not consistent with what he said in his affidavit he reiterated that he could not recall if there was a receipt or not. When he was asked why in his affidavit he said he had lost the receipt he said he did not know where he kept the receipt when he moved house. By "moved house" he meant moving out of 3E about 2 weeks before the hearing as a result of the acquisition as he explained. When he was asked if he was saying that there was a receipt he answered "Yes. There was."

(44) The appellant said in his affidavit that he held the original lease from Success Enterprises to Mah Lai Sim, the mortgage from Mah Lai Sim to Huay Hong Finance and the re-assignment from Huay Hong Finance to Mah Lai Sim. He did not say that he held the 1972 assignment (in favour of the second respondent and Loon Khoh) or the 1980 release (from Loon Khoh to the second respondent). He made no reference to the custody of these documents.

(45) Under cross examination he agreed that all documents relating to 3E and 3D were kept in a metal cabinet in Meng Teck's premises and that he had removed them. He added that he could not recall where he had put them. He moved out of 3E after that. He explained that all the documents were kept in one envelop and when he said he removed them he meant he took the envelop out of the cabinet. He said he did not look inside the envelop. He also said he took the house documents out of the envelop and handed them over to his son Loon Khoh and Loon Khoh submitted them to the Collector during the s 10 inquiry. He said a receipt was issued to Loon Khoh but Loon Khoh did not give it to him.

(46) The appellant disagreed with counsel for the second respondent that he removed the documents "some time back". He said he did that about two weeks before this hearing. When it was put to him that the documents had been found to be missing long before the acquisition he said that he remembered he separated the title deeds from the rest of the documents after he had taken them out of the cabinet and that he did not know where he had put them. He said this was after the acquisition. The evidence is that the cabinet was in Meng Teck's premises and during the time that documents relating to 3E and 3D were kept in it the cabinet was either unlocked and both the parties could have access to what was in it or it was locked and both had the key to it.

(47) The second respondent said in his affidavit that "around 1972 [his] upstairs neighbour Mr Ronnie Tong told [him] that he had obtained a job in Australia and that he intended to migrate to Australia with his family" and that Tong asked him if he wished to buy his "family house" meaning 3D. He said he told Tong that "if the price was good, [he] would buy it". He said:

We negotiated and finally settled on the price of \$20,000.00 but I had to give him another \$2,000.00 extra as well. The purchase price and the extra \$2,000.00 was paid by me.

He said Tong was the husband of Mah Lai Sim.

(48) Under cross examination he said the price was paid in cash to Tong and his wife and that the cash was handed over in the medical hall at 3E. Tong said that he would "handle the matter for [him]". He did not obtain a receipt from Tong. He added that he trusted him. He handed over \$20 000 in cash even before the 1972 assignment was prepared. He said that "[Tong and he] were very close" and that "[Tong] used to buy herbs from [him]".

(49) The second respondent said in his affidavit:

In 1972, Tan Joon Khoh had already stopped studying and he had yet to find any job. He was also my most beloved brother as I had looked after him since he was young. I therefore put Tan Joon Khoh and my name in the Lease document. It was my gift to Tan Joon Khoh.

"Joon Khoh" was of course a reference to Loon Khoh.

(50) When he was asked under cross examination if he instructed the solicitor to include Loon Khoh as a purchaser in the 1972 assignment he said he did and when he was asked why he did that he said Loon Khoh was "more intelligent" and was "cleverer than [him]" and "in case in future there was anything he could assist [him]". He said Loon Khoh did not contribute any part of the price of \$20 000.

(51) The second respondent said in his affidavit that the "original of [his] title documents had been submitted to the Collector of Land Revenue during the Inquiry stage of the acquisition proceedings" and he produced copies. The documents included the 1972 assignment (from Mah Lai Sim to the second respondent and Loon Khoh) and the 1980 release (from Loon Khoh to the second respondent).

(52) The second respondent said in his affidavit:

At the time, my wife had to go between Geylang, where we were staying and 3E Paya Lebar Road, where I was working and cook for all the extended family members to eat. I would mind the shop and the rest of the family members would help if they wanted to. Some were going to school. Whenever money was required by any of the family members, they would ask for the money either from my mother or myself. I would always give money to my mother and father when they asked for it as well. These payments and all the family's expenses were borne from the profits of Meng Teck and my trading.

He said "this was the way it was even after [he] purchased 3D Paya Lebar Road in 1972 except that now [his] wife and children did not have to shuttle between Geylang and Paya Lebar as they moved into 3D Paya Lebar Road".

(53) The second respondent also said in his affidavit:

Throughout my life as well, my relationship with my father had been very bad. It was later on in life that I realised that he suspects that I was not his flesh and blood son and he has even called me a "bastard" in front of other relatives before. When my father was in Singapore, he did not work and every time he needed money, he would just demand it from me as well as the other siblings when they grew older.

He was not asked in cross examination when it was that he realised the appellant held the suspicion he mentioned and he did not explain what he meant by "later on in life". He was not cross examined on this part of his affidavit evidence.

(54) I have noted that Loon Khoh was not called to testify. Tong and Mah also were not called but they might not have been available. The documents of title would have been delivered to the Collector who would have given a receipt for them but although the Collector was willing to give a statement for use as evidence he was not asked about the documents. He was asked about the appellant's claim to the compensation and his answers were -

Q ... what was [appellant's] claim on the apportionment?

A Mr Tan Poh Hiang asked that 50% of the compensation be paid to him.

Q ... what was the basis of [his] claim to compensation?

A See attached submitted during the Inquiry by Ms Angela Lee on behalf of Mr Tan Poh Hiang.

The attached statement contains no basis in law for any claim to any part of the compensation on the acquisition of 3D. There is no allegation of payment of any part of the purchase price by the appellant or of any trust in his favour. There is no allegation that he had any beneficial interest in 3D. The whole of the attached statement consists of an appeal on grounds of hardship and a request for sympathetic consideration.

(55) The appellant said in his affidavit that he paid the purchase price of \$20 000 and he had lost the receipt from Mah. His evidence is that a receipt was issued for the payment as noted above. When he was cross examined he said he could not recall if he had any receipts. He reiterated that he could not recall if there was a receipt. Then he said he did not know where he kept the receipt when he moved house and he only moved house after the acquisition. In respect of 3E receipts were issued and he produced them although he could not see the documents and they must have been put together for him. In the transaction in respect of 3D which was a few years later and in which the same solicitor was given instructions he first contradicted his evidence in the affidavit and then changed his evidence and reverted to the position taken in his affidavit.

(56) The appellant had no means to buy 3D. He had no work when he was in Singapore and whenever he needed any money he was just demanding it from the second respondent and later from one or more of his other children too. The second respondent was providing for his parents and his siblings until they were on their own in addition to his own family. He was able to do that from what he was making in

Meng Teck and his trading business and I find that it was the second respondent who provided the whole of the purchase price of 3D. The appellant did not pay any part of the price. This should be sufficient to dispose of the dispute as to apportionment between them but other matters have been addressed to me and evidence has been led and it is as well that I deal with them.

(57) The appellant said he instructed the solicitor to prepare the 1972 assignment with the second respondent and Loon Khoh as purchasers. Under cross examination he said he was worried that it could be troublesome as far as procedures were concerned. It can only be "troublesome as far as procedures were concerned" upon death because of the need for probate or letters of administration and a subsequent instrument in order to vest the property in the persons whom he intended to benefit. If the assignment is taken in the names of these persons from the beginning then no further action will have to be taken to vest the property in them upon death and there may not be any need for probate or letters of administration if the person dies leaving no property passing on death. By having the assignment in the names of the second respondent and Loon Khoh it will no longer be troublesome as far as procedures are concerned if they are the persons intended to benefit. If this is the reason then it does not serve the appellant even if I had found as a fact that he paid any part of the purchase price. The resulting trust arising from the payment of any part of the purchase price would have been rebutted by the nominees being the children of the appellant. See *Pettitt v Pettitt* [1970] AC 777 at p 814.

(58) The appellant gave another reason in his affidavit. He said he wanted to ensure that the property would not be affected should he become personally liable for any business failure. He said he explained this reason to the purchasers (the second respondent and Loon Khoh). Of course the property would not be affected if it was no longer his even if I had found that he paid any part of the purchase price. If it was a gift or advancement to the children it would no longer be his. He did not say that his intention was merely to conceal it from his creditors. If it is his case that the reason given in his affidavit is the real reason then again it would not serve the appellant. See *Tinker v Tinker* [1970] P 136 where *Pettitt v Pettitt* was cited in argument.

(59) The appellant could have arranged for the 1972 assignment to be made in favour of Jong Kui and Yan Toi as he said he did in respect of 3E or one of them together with Loon Khoh but he decided differently as he said. He had the assignment in the names of the second respondent and Loon Khoh. He included the second respondent because he said he loved him. This was a person whom he had ill treated when they were in Batam and had suspected to be not his own natural son and whom he had called a "bastard" in front of relatives. I find it inconceivable that he should trust him to be a mere nominee and trustee for him. If in fact he loved him and Loon Khoh was his third son as he pointed out then it would be consistent with his intention to benefit them as he was "worried" it could be "troublesome as far as procedures were concerned".

(60) Under cross examination the appellant said that he paid the property tax in respect of 3D and the last time he did that was "sometime in January this year". He said he issued a cheque for this purpose. Loon Khoh wrote out the cheque and he signed it. He said he knew that the cheque for property tax would be made payable

to the government. When he was asked if the name of the payee was written in English or Chinese he said he would not know as he did not issue the cheque. It may be that he meant he did not write it out. When he was asked how long this banking account had been opened he said it was after the government acquired the Paya Lebar Road property. The compensation money was put in the names of three of his children. The s 5 declaration was published only in August this year and no compensation was paid until possession was taken about two months later. The banking account could not have been opened earlier than a few months ago. He went on to say that he was not even a signatory.

(61) Payment of property tax may be an act subsequent to the purchase under the 1972 assignment and generally such acts would not be admissible in evidence in favour of the party doing them. See *Shephard v Cartwright* [1955] AC 431 at p 445. In this case it does not even assist the appellant in any way at all. He did not sign any cheque to pay property tax whether in January this year or at any other time and he did not pay any property tax in respect of 3D. He was not a signatory to any bank account and the bank account he referred to was only opened long after he said he had last issued a cheque to pay property tax. It only goes to show how unreliable his evidence is although I do not overlook the fact that the appellant is 96 years old.

(62) I find the appellant's evidence quite unsatisfactory. I think he had no intention such as he said he had in his affidavit or as he said he had under cross examination. He did not say that he took any advice on this. He gave one reason in his affidavit. At the hearing he gave another reason. I find that he has not proved that he had either the intention he said he had in his affidavit or as he said he had in his oral evidence and if he did have one or the other or even both of those intentions he has not rebutted the presumption of a gift or advancement in favour of his sons the second respondent and Loon Khoh.

#### *1980 release*

(63) The appellant said in his affidavit that Loon Khoh wanted to buy an HDB flat and so he could not continue to hold 3D in his name. He said:

Hence, I sought the advice of Mr Poh Kim Guan, a solicitor. He advised that the only way to remove Tan Loon Khoh as a joint owner of 3-D Paya Lebar Road was to formally transfer his legal interest in the property to the 2nd Respondent. I therefore arranged for Mr Poh Kim Guan to prepare an Indenture stating that the (*sic*) Tan Loon Khoh would transfer his interest in 3-D Paya Lebar Road to the 2nd Respondent for a consideration of S\$45,000.00.

The said sum of S\$45,000.00 was never paid by the 2nd Respondent to Tan Loon Khoh. The Indenture was done as a formality and no money was actually paid. As far as I was concerned, my property 3-D Paya Lebar Road was still held in trust for me by my son the 2nd Respondent.

As far as he was concerned the second respondent held the property in trust for him but he did not say if he included this in his instructions to the solicitor.

(64) Under cross examination he said that the amount of the consideration was suggested by him to the solicitor. When he was asked why \$45 000 and not any other sum he said:

I intended to buy a house. So I would need this sum of money to pay for the house. This sum will also include other expenses.

I was concerned that he might have misunderstood counsel and I explained the question and the context to him. He said the amount would include other expenses to attend to formalities. By "formalities" he meant preparation of documents and by "documents" he said "Such as title deeds if I [emphasis added] want to buy a house". Under continued cross examination he said that he paid the \$45 000. He was asked again for clarification and he said "I paid".

(65) The second respondent said in his affidavit:

In 1980, Tan Loon Khoh told me that he had purchased a HDB flat and because of that, he needed money and also had to remove his name from the lease at 3D Paya Lebar Road. He therefore wanted to sell 3D Paya Lebar Road to me. As a result, even though 3D Paya Lebar Road was originally purchased by me, I decided to agree and I paid him \$45,000.00, which was much more than the price I had paid when I purchased 3D Paya Lebar Road, and his name was removed from the Lease of 3D Paya Lebar Road.

(66) Under cross examination the second respondent said that \$45 000 was what Loon Khoh asked for and that Loon Khoh said he needed the money to buy a house. There was no bargaining and he agreed to the price because he loved Loon Khoh. The 1980 release was prepared at the law office of Mr Poh Kim Guan and the second respondent paid the fees.

(67) In his affidavit the appellant said that no money was paid and the 1980 release was done as a formality. Under cross examination he said he would need this amount to pay for the house. \$45 000 would include a sum for expenses if he wanted to buy a house. He then went on to say that he paid the \$45 000 contrary to what he said in his affidavit. I think the appellant knew that \$45 000 was paid to Loon Khoh and that this was what Loon Khoh needed to pay for his HDB apartment and incidental expenses. I think he knew that the second respondent paid this to Loon Khoh for his interest in 3D and I find that the 1980 release was made in consideration of \$45 000 paid by the second respondent to Loon Khoh as stated in it.

(68) In my decision the appellant did not pay any part of the purchase price under the 1972 assignment or under the 1980 release and no resulting trust arises under or by reason of the transactions evidenced by the 1972 assignment or the 1980 release. The second respondent was the only person in whom the legal estate in the acquired land namely Lot U35280T of Mukim 24 together with the residential unit at 3D Paya Lebar Road vested and who was beneficially entitled to it as at the acquisition date. In my decision he was the only person entitled to the compensation and the Collector was right and I confirm his award as regards the apportionment of the compensation.

*Costs*

(69) The second respondent has succeeded in this appeal but the appellant has also partially succeeded in the issue as regards the payment of the price of 3E. The second respondent did not appeal the Collector's award as regards the amount of the compensation but the appellant did and in the event the appeal was allowed and the amount of the compensation has been increased. The appellant is the second respondent's father and he is already 96 years old. The second respondent himself will soon be 70 years old. This appeal must have caused no small amount of distress not only to the parties themselves but also to other members of their family and the dispute between the parties must end much sooner rather than later. The second respondent will have his costs of these proceedings for apportioning the amount of compensation and taking into consideration all such matters as are relevant I fix the costs at \$5 000 and make an order accordingly.

2005 December 30

Commissioner of Appeals T Q Lim SC