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

Between

Ng Boo Tan

... Appellant

And

Collector of Land Revenue

... Respondent

CASE STATED
By the Appeals Board for the Opinion of the Court of Appeal pursuant to s 30 of the Land Acquisition Act

Appeal

(1) This appeal raises an important question of law the determination of which will have a substantial bearing on the determination of the compensation payable for land acquired under the Land Acquisition Act which came into force in 1967 ("1967 Act"). This is a question which would have arisen in a very large number of cases (and will continue to do so) and surprisingly it is only now that an occasion should arise for it to be considered.

(2) On 10 December 1998 ("acquisition date") a notification was published in the *Gazette* of a declaration made under s 5 of the 1967 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 in the acquired land.

(3) 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.

(4) The appellant appeals against the award on the grounds that the Collector has erred in his determination of the market value of the acquired land and that the "award is lower than the value of 4/5 room re-sale HDB flats" or, as it may fairly be understood to mean, that the Collector has erred in his determination of the amount of the compensation awarded for 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.

(5) This Board has heard the appeal but has not given its decision yet and will do so or otherwise give directions for the further conduct of this appeal as shall be necessary or proper when the Case has been remitted to it with the Opinion of the Court of Appeal thereon.

Acquired Land

(6) 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. These buildings have since the acquisition date been demolished. Lot 3769 was a near rectangular plot of land at Upper Paya Lebar Road on its West side to the South of and 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 floor area of the flat was 109sm. The whole of Lot 3769 has also been acquired together with the acquired land.

(7) In his "recommended answers" to a series of questions put to the Land Transport Authority ("LTA") by the appellant Mr Quek Teck Beng of the LTA said in his letter of 29 November 2001 that:

> (a) Road lines are drawn up to safeguard the need to provide road infrastructure to meet the future travel demand.
>
> (b) LTA does not inform affected owners of the road proposals. It is only when the road project is implemented that LTA will initiate action with Singapore Land Authority (SLA) for the acquisition of the affected private land under the Land Acquisition Act. However, any land owner or member of the public can purchase a Road Line Plan [("RLP")] at any time.
>
> (c) There are no statutory requirements related to the drawing up of the [RLPs]. [And]
>
> (d) Changes to road proposals may arise if there are changes to land use/concept plan.

It follows from Mr Quek's answers 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 1967 Act. The owners of land affected by a road line will not know about it unless they obtain a RLP and the market may not know of the road line except through the RLP.

(8) Mr Quek said that 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 directly 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 directly affected the rear block. In May 1995 the Development Guide Plan 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.

(9) 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 South 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"). They would have been drawn before the acquisition date and this Board finds accordingly. 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 Tampenis 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.

(10) On the evidence this Board finds that the use to which the acquired land was to be put whether as shown in the 1995 road line or in the 1998 road lines was substantially the same. There was a scheme which involved the use of the acquired land (together with Lot 3769 and other plots of land) for a public road. The road project was to be implemented and action was accordingly taken for the acquisition of the acquired land. The scheme as made known by the 1995 road line was in substance the same as the scheme for which the acquired land has been acquired and acquisition was an integral part of this scheme. This scheme has caused a loss in value of the acquired land.

Compensation

(11) Section 33 of the 1967 Act provides:

> (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall ... take into consideration the following matters and no others:
>
> (a) the market value -
>
> (i) ...

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

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

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

whichever is the lowest ....

There is no evidence that any notification under s 3(1) ("s 3(1) notification") 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. In this appeal this Board has to determine the amount of the compensation for the acquired land and for this purpose the market value as at 10 December 1998 and the other matters mentioned in s 33(1) and no other matters are to be taken into consideration. In particular the matters mentioned in s 34 are not to be taken into consideration.

Petition of Appeal

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

(5) 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.

(6) The Collector's award is lower than the value of 4/5 room re-sale HDB flats.

It is not disputed that "road reserve lines" is a reference to "road lines" referred to in Mr Quek's letter. The appellant's case is that the principle of law commonly referred to as the *Pointe Gourde* principle (in its operation 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". The Collector says that the principle is not part of the law of Singapore and he disagrees that the market value of the acquired land should be determined in the manner submitted by the appellant.

Pointe Gourde Principle

(13) In *Pointe Gourde Quarrying & Transport Co Ltd v Sub-Intendent of Crown Lands* [1947] 1 AC 565 (Privy Council on appeal from Trinidad and Tobago) Lord MacDermott said at p 572:

It is well settled that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition.

He referred to *South Eastern Railway Co v London County Council* [1915] 2 Ch 252 where Eve J (in the court below) said at p 258:

> ... increase in value consequent on the execution of the undertaking for or in connection with which the purchase is made must be disregarded.

and to *Fraser & ors v City of Fraserville* [1917] AC 187 (Privy Council on appeal from Quebec) where Lord Buckmaster said at p 194:

> ... the value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired....

In *South Eastern Railway Co* the question before the court concerned not the increase in value of the acquired land but the increase in value of the seller's other land which it retained and from which the acquired land was severed. In *Fraser* as also in *Pointe Gourde* the question concerned the increase in value of the acquired land.

Right to Compensation

(14) The right to compensation for land compulsorily acquired is derived from statute. *Cripps on Compulsory Acquisition of Land* (1962) in relation to the law of England states at pp 698, 699:

> The right and the nature of the right to purchase-money or compensation is derived from the Lands Clauses Acts, and what the [Land Compensation Act of 1961] gives to the owner compelled to sell is compensation: the right to be put, so far as money can do it, in the same position as if his land had not been taken from him.... This has often been described as compensation on the basis of the value of the lands to the owner.... The principle under the Lands Clauses Acts that the basis of compensation for land taken is the value to the owner as it existed at the date of the notice to treat is exemplified in the rule that the value of all potentialities to the owner must be included but as possibilities and not as realised in the hands of the purchaser, and that all restrictions on user and enjoyment must be taken into account subject to the possibility of their removal.

In England the right to compensation given to the owner by statute is the right to be put, so far as money can do it, in the same position as if his land had not been taken from him and the basis of compensation is the value of the land to the owner including the value of all potentialities to him.

Pointe Gourde Principle In Reverse

(15) In *Melwood Units Pty Ltd v Commissioner of Main Roads* [1979] AC 426 (Privy Council on appeal from Queensland) Lord Russell of Killowen said at p 434:

> ... the landowner cannot claim compensation to the extent to which the value of his land is enhanced by the very scheme of which the resumption forms an integral part: that principle in their Lordships' opinion operates also in reverse. A resuming authority cannot by its project of resumption destroy the potential of the

> whole 37 acres for development as a drive-in shopping centre, and then resume and sever on the basis that that destroyed potential had never existed.

In *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 1 All ER 846 (Privy Council on appeal from Hong Kong) Lord Nicholls of Birkenhead said at pp 861,862:

> A landowner cannot claim compensation to the extent that the value of his land is increased by the very scheme of which the resumption forms an integral part. That principle applies also in reverse. A loss in value attributable to the scheme is not to enure to the detriment of a claimant: see *Melwood Units Pty Ltd v Commissioner of Main Roads*.... The underlying reasoning is that if the landowner is to be fairly compensated, scheme losses should attract compensation but scheme gains should not.

The owner would not, so it may be said, be fairly compensated if the potentialities are destroyed by the scheme of the acquiring authority before acquisition begins unless the scheme losses are compensated for.

(16) The basis of compensation is the value of the land. It is the value at the relevant date that has to be determined and as a matter of valuation excluding any increase in the value "due entirely to the scheme underlying the acquisition" (as in *Pointe Gourde*) or "consequent on the execution of the undertaking for or in connection with which the purchase is made" (as in *South Eastern Railway Co*) or any advantage "due to the carrying out of the scheme for which the property is compulsorily acquired" (as in *Fraser*) is really quite unremarkable. The *Pointe Gourde* principle itself has drawn some harsh criticism from those in the valuation profession. See Baum & Sams, *Statutory Valuations* (3rd Ed, 1997) at p 154 *et seq*; Johnson, Davies & Shapiro, *Modern Methods of Valuation* (9th Ed, 2000) at p 531. These exclusions must be distinguished though from the "potentialities to the owner" if there are any and which must be included "but as possibilities and not as realised in the hands of the purchaser".

(17) The *Pointe Gourde* principle in reverse stands on a different footing. The underlying reasoning as Lord Nicholls said in *Shun Fung Ironworks* is that scheme losses should attract compensation *if the landowner is to be fairly compensated.* The principle impacts the compensation itself. Scheme losses are compensated for so that the landowner may be put, so far as money can do it, in the same position as if his land had not been taken from him. The principle is not concerned with how the market value is to be determined but if there is a scheme loss the measure of this loss may be the difference between the value of the land determined in the ordinary way having regard to the statutory provisions and limitations if any and the value determined in the same way but excluding the underlying scheme.

Application of Common Law of England

(18) Section 3 of the Application of English Law Act provides:

> (1) The common law of England (including the principles and rules of equity), so far as it was part of the law of Singapore immediately before 12th November 1993, shall continue to be part of the law of Singapore.

> (2) The common law shall continue to be in force in Singapore, as provided in subsection (1), so far as it is applicable to the circumstances of Singapore and its inhabitants and subject to such modifications as those circumstances may require.

The *Pointe Gourde* principle and the principle in reverse as applied in *Melwood Units* and *Shun Fung Ironworks* are derived from decisions on the construction of the relevant statutory provisions and in that sense they are part of the common law of England. What has to be considered first is whether they were part of the law of Singapore immediately before 12 November 1993 having regard to the provisions of the 1967 Act and of the earlier legislation relating to compulsory acquisition of land.

(19) In *Chew Ming Teck v Collector of Land Revenue & anor* [1988] SLR 118 (Court of Appeal); [1991] SLR 8 (Privy Council) the Collector awarded compensation of about $550 000 for the acquired land and apportioned it among three persons interested who were the freehold reversioner, one of the respondents as lessee, and the appellant as sub-lessee. The appellant's share (as well as that of the freehold reversioner) was the nominal sum of $1 and he appealed against the award as to the apportionment. It does not appear from the reports whether he also appealed as to the amount of the compensation for the acquired land.

(20) The appellant was entitled to a redevelopment sub-lease and on completion of the redevelopment of the acquired land he would be entitled to the profits. He applied for planning permission to carry out his proposed redevelopment but this was refused on the ground that the site was affected by a redevelopment scheme for the area. Subsequently the land was acquired for a public purpose namely "urban redevelopment". The redevelopment scheme for the area was the scheme underlying the acquisition.

(21) Before the Court of Appeal on a case stated by the Board the appellant submitted that the Collector had taken into account certain matters which he said were errors of fact and law including para (a) that planning permission for redevelopment had been refused when his case was that, but for the acquisition, planning permission would have been granted. Chan Sek Keong J (as he then was) (delivering the opinion of the Court of Appeal) said at p 126:

> The principle of law that is involved in the submission based on para (a) is that the land must be valued for compensation leaving out of account any effect on value, either up or down, of the acquisition itself or the scheme underlying it: see *Pointe Gourde Quarrying v Sub-Intendent of Crown Lands* ... and *Melwood Units v Commissioner of Main Roads*.... This principle, counsel for the appellant submits, also applies to both the valuation of the land as well as the apportionment, ie the appellant's interest in the land must be valued by leaving out of account any effect on the value of the compulsory acquisition. Counsel for the respondents concedes this point....

The respondents were the Collector and the lessee and they as well as the appellant were all represented by English leading counsel.

(22) Mr Hwang of counsel for the appellant submitted that the Court of Appeal in *Chew Ming Teck* accepted that the *Pointe Gourde* principle (including the principle in reverse) was part of the law of Singapore. He said that the court must have included the principle as part of a necessary step to reach its conclusion. He referred to *R (Khadhim) v Brent London Borough Council Housing Benefit Review Board* [2001] QB 955.

(23) This Board is unable to agree. In *Brent Housing Board* Buxton LJ (delivering the judgment of the Court of Appeal) said at para 16:

> While there has been much academic discussion of the proper way of determining the ratio of a case, we find the clearest and most persuasive guidance, at least in a case such as the present where one is dealing with a single judgment, to be that of Professor Cross in *Cross & Harris, Precedent in English Law*, 4th ed (1991), p 72: "The ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him."

and at para 33:

> ... there is a principle stated in general terms that a subsequent court is not bound by a proposition of law assumed by an earlier court that was not the subject of argument before or consideration by that court.

and at para 38:

> ... there may of course be cases, perhaps many cases, where a point has not been the subject of argument, but scrutiny of the judgment indicates that the court's acceptance of the point went beyond mere assumption. Very little is likely to be required to draw that latter conclusion: because a later court will start from the position, encouraged by judicial comity, that its predecessor did indeed address all the matters essential for its decision.

(24) In *Chew Ming Teck* counsel for the appellant contended that when valuing the appellant's interest the Collector had assumed that planning permission had been refused. It was refused and this was not disputed but it was refused because of the redevelopment scheme for the area and acquisition was an integral part of this scheme. If the *Pointe Gourde* principle in reverse applied then in determining the amount of the compensation for the land (and not the interest of the appellant only) the redevelopment scheme underlying the acquisition should not be taken into account and the refusal of planning permission also should not be taken into account. If this was right then the loss attributable to the refusal of planning permission would have attracted compensation and the amount of the compensation for the land and the appellant's interest would have reflected the market value determined on the basis that the refusal of planning permission was excluded.

(25) In the event the court did not have to address this part of the appellant's case. The appellant claimed loss of profits as the measure of the scheme loss and the court found that he had failed to make good his claim. The court further found that the refusal of planning permission had not influenced the Collector in his valuation of the appellant's interest. See at pp 126,127. At p 127 Chan J said:

> ... when the Collector decided that the interest of the appellant in the land was 'nil' and for which he apportioned a nominal sum of $1, he did not allow the refusal of planning permission to influence his valuation, either up or down.

The Collector carried out the valuation without taking into account the refusal of planning permission as the court found and there was no scheme loss.

(26) With respect it seems clear that whether the *Pointe Gourde* principle in reverse was or was not part of the law of Singapore was not a matter that was essential for the court's decision. It was not treated by the court as a necessary step in reaching its conclusion. It is not even clear that the court had accepted the point. It does not appear to have been the subject of any argument before the court. In the passage of the opinion cited it appears that the court was merely stating the appellant's case and not saying that it accepted the principle of law referred to or that it was part of the law of Singapore. The decision of the Board affirming the Collector's apportionment of the compensation was affirmed by the Court of Appeal but the appeal to the Privy Council was allowed and the matter was remitted to the Board. The *Pointe Gourde* principle in reverse was not considered nor was it necessary to do so in the conclusions the Privy Council had reached.

(27) Apart from *Chew Ming Teck* there are no authorities which have any bearing on the applicability of the *Pointe Gourde* principle or the principle in reverse to Singapore. It appears that the point as to the applicability of the principle in reverse has not been decided but in the event that this Board is wrong and that the court in *Chew Ming Teck* did accept the point then as this Board is not a court much less will be required than what Buxton LJ said was likely to be required to draw the conclusion that the acceptance of the point made by counsel went beyond mere assumption.

(28) Before leaving this point reference may be made to the Lahore (India) case of *Muhammad Ismail and ors v Secretary of State* AIR 1936 Lah 599 cited in Aggarwala, *Compulsory Acquisition Of Land In India* (7th Ed 1999 Rep) where Bhide J said at p 600:

> The market value of the land in this case must, I think, be considered apart from the effect thereon, if any, of the expected acquisition by the Government. Although possession had been taken in 1925, there could be no certainty about the acquisition until the necessary notifications under the Act had issued and there is no evidence to show what effect, if any, the possibility of acquisition had on the market. It seems, moreover, obviously unfair that the Government should be able to reduce the compensation payable for compulsory acquisition by merely announcing in advance its intention of acquiring a piece of land and thus throwing a 'cloud' on its market price, before issuing notifications required by the Act.

The scheme under the Indian legislation is in many respects similar to that under the 1967 Act of Singapore but the market value to be taken into consideration is that as at the date of publication of the notification under s 4(1) (s 3(1) notification under the 1967 Act) with no alternative dates and there is no provision to limit the market value equivalent to s 33(5)(e) of the 1967 Act to which further reference will later be made.

(29) In *Muhammad Ismail* possession had been taken by the Government in 1925 as observed by the learned judge but it was not until August 1933 that the s 4(1) notification was published. Bhide J founded his decision on the determination of the *market value* but with respect this must be difficult to reconcile with his later statement that a cloud had been thrown on the market price. No authorities were referred to. It may have been a bold decision in a hard case to prevent an injustice arising out of an abuse of the powers of taking possession some 8 years before acquisition. This Board finds itself unable to derive any assistance from *Muhammad Ismail*. No other authorities are referred to in Aggarwala (*op cit*) touching on the *Pointe Gourde* principle in reverse.

Scheme Loss & Market Value
1857 Act

(30) Compulsory acquisition of land for a public purpose in Singapore has a long history going back to 1857 with the passing by the then Legislative Council of India in that year of Act VI of 1857 or an Act for the acquisition of land for public purposes ("1857 Act"). The preamble to the Act stated:

> Whereas it is expedient to make better provision for the acquisition of land needed for public purposes within the territories in the possession and under the Government of the East India Company, and for the determination of the amount of the compensation to be made for the same....

The territories referred to when the 1857 Act was passed included Singapore.

(31) Acquisition under the 1857 Act began with a declaration that the land was required to be taken for a public purpose. A public officer would then inquire into the "value of the land and the amount of compensation to be awarded". Provision was made for reference to arbitration in the event of any dispute as to the amount of the compensation and other matters. s 24 provided that "the amount of compensation shall include any damage which may be sustained by any of the persons interested therein in respect of any adjoining land held therewith". Apart from this the 1857 Act was silent as to the determination of the value of the land or the amount of the compensation. It was silent as to the treatment of any appreciation or depreciation in value attributable to the public purpose for which the land was required to be taken or the declaration that the land was required to be taken or any scheme involving the acquisition of the land.

1890 Ordinance

(32) The 1857 Act was repealed in 1890 by the Acquisition of Land for Public Purposes Ordinance ("1890 Ordinance") passed by the then Legislative Council of the Straits Settlements that year. The preamble stated:

> Whereas it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition....

Section 4(1) provided:

> Whenever it appears to the Governor in Council that land in any locality is likely to be needed for any public purpose a notification to that effect shall be published in the *Gazette*....

and s 6 provided:

> (1) ... whenever it appears to the Governor in Council that any particular land is needed for a public purpose or for a company a declaration shall be made to that effect....

Sections 4(1) and 6 are in *pari materia* with ss 3(1) and 5 of the 1967 Act (substituting "the President" for "the Governor in Council") and every acquisition of land under the 1890 Ordinance began as it begins under the 1967 Act today with the declaration under s 6 (s 5 of the 1967 Act).

(33) Section 23 of the 1890 Ordinance provided:

> The amount of compensation to be awarded for land acquired under this Ordinance shall be made up of the following particulars:-
>
> (a) the market value at the date of the declaration made under section 6 ....

Para (a) of s 23 was amended in 1902 to read:

> the market value at the date of the publication of the notification under section 4(1) if such notification shall within 6 months from the date thereof be followed by a declaration under section 6 in respect of the same land or in other cases the market value at the date of the declaration made under section 6.

The 1890 Ordinance introduced as the primary basis of compensation the market value of the acquired land at a specified date. The components of the compensation included three other "particulars" of losses suffered and expenses incurred. Para (b) referred to damage for severance; para (c) referred to damage for injurious affection; and para (d) referred to reasonable expenses of a change of residence or place of business. Losses suffered and expenses incurred formed the secondary basis. All these "particulars" of the compensation have been substantially retained in successive re-enactments of the law.

(34) Section 24 of the 1890 Ordinance provided:

> In determining the amount of compensation to be awarded for land acquired under this Ordinance the particulars following shall not nor shall any of them be taken into consideration -
>
> ...
>
> (d) any damage which after the time of awarding compensation is likely to be caused by or in consequence of the use to which the land acquired will be put;

> (e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;
>
> (f) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put ....

The other "particulars" were para (a): urgency leading to acquisition; para (b): disinclination of person interested to part with the land; para (c): damage without cause of action; and para (g): certain improvements. All these "particulars" with an amendment to para (d) have also been substantially retained in successive re-enactments of the law.

(35) Para (e) of s 24 of the 1890 Ordinance referred to an increase in value of the kind with which *Fraser* and *Pointe Gourde* were both concerned and para (f) referred to an increase in value of the kind with which *South Eastern Railway Co* was concerned. The legislature in 1890 appears to have recognised the distinction and to have made separate provision for them long before these cases came to be decided. More importantly the legislature has made specific provision for the "particulars" which make up the compensation and the "particulars" which shall not be taken into consideration and it appears to have intended that ss 23 and 24 would provide a code for the determination of compensation for land acquired under the 1890 Ordinance. This was a substantial departure from the position under the 1857 Act.

1920 Ordinance

(36) The law relating to the acquisition of land was amended by the Land Acquisition Ordinance of 1920 ("1920 Ordinance") which repealed the 1890 Ordinance and re-enacted ss 23 and 24 of the 1890 Ordinance as ss 25 and 26 of the 1920 Ordinance. There was one significant change. Para (f) of s 24 of the 1890 Ordinance (increase in value to other land) which was one of the "particulars" not to be taken into consideration was re-enacted as para (b) of s 25 of the 1920 Ordinance as one of the matters to be taken into consideration in determining the compensation. The result was to provide for what is in reality a set-off for such increase in value.

(37) Another significant change was an amendment of "after the time of awarding compensation" to "after the date of the publication of the declaration under section 5" in para (d) of s 24 of the 1890 Ordinance and its re-enactment as para (d) of s 26 of the 1920 Ordinance. Section 34 of the 1967 Act now provides:

> In determining the amount of compensation to be awarded for land acquired under this Act, the Board shall not take into consideration -
>
> ...
>
> (d) any damage which is likely to be caused to the land acquired after the date of publication of the notification under section 5 by or in consequence of the use to which it will be put ....

The damage that is not to be taken into consideration and consequently will not attract any compensation is damage after the acquisition date. Before that date some damage may have already been caused by the use to which the land will be

put if that use is announced as by the publication of a s 3(1) notification. It appears that such pre-acquisition date damage is not covered by s 26 of the 1920 Ordinance (s 34(d) of the 1967 Act) although it does not follow that the loss attributable to such pre-acquisition date damage is for this reason alone to attract any compensation and it is not suggested that it does.

(38) The 1920 Ordinance also introduced a new s 25(2) providing in para (a) for improvements which were not made bona fide to be disregarded and in para (b) for increase in value by reason of unlawful use not to be taken into consideration. The provisions of ss 25 and 26 have been retained substantially unchanged in every re-enactment of the law including as pointed out above para (d) of s 26 and the reference to damage caused to the acquired land after the acquisition date.

(39) Under s 23 of the 1890 Ordinance (as amended by the 1902 amendment) one component of the amount of the compensation was the market value at the date of publication of the s 4(1) notification if it was followed within 6 months by a s 6 declaration. If there was no s 4(1) notification or if it was not followed by a s 6 declaration within 6 months then it was the market value at the date of the s 6 declaration. For convenience and to avoid confusion all references to "s 3(1) notification" and "s 5 declaration" will include a reference to the notification and declaration under ss 4(1) and 6 of the 1890 Ordinance unless a contrary intention appears.

(40) One of the consequences of the publication of a s 3(1) notification is depreciation in value of the affected land. The affected land is "likely to be needed" for a "public purpose" (under the 1890 Ordinance) or for a "purpose specified in section 5(1)" (in subsequent legislation). It is likely to be compulsorily acquired. There would have been a scheme which involves acquisition or of which acquisition forms an integral part. It may well be that in time the scheme will be totally abandoned in which case a s 5 declaration will not be made or the scheme will be modified or will be replaced by another scheme altogether. If acquisition does eventuate it will be to carry out the same scheme or the modified scheme or the new scheme. There will be depreciation in value attributable to the scheme or to the publication of the s 3(1) notification or to both and to the risk of acquisition. There will be a loss which Lord Nicholls in *Shun Fung Ironworks* aptly called a scheme loss.

(41) A s 3(1) notification may be followed by a s 5 declaration in respect of the same land or part of it but this is by no means certain. Nothing in the 1890 Ordinance or in any of the subsequent legislation requires either a s 3(1) notification to be followed by a s 5 declaration or a s 3(1) notification to be published before a s 5 declaration is made. Under s 3(3) of the 1967 Act a s 3(1) notification will cease to have effect on the expiration of 12 months from the date of its publication "but nothing in [subsection 3] is to preclude a further exercise of the powers conferred on the President by [s 3] or section 5 in respect of such land". There may be a s 3(1) notification followed by a s 5 declaration within 6 months or there may be a s 3(1) notification followed by a s 5 declaration after 6 months of its publication or after the expiry of one year from the date of its publication and there may also be a s 5 declaration without a s 3(1) notification having been published at all.

(42) Under s 23(a) of the 1890 Ordinance before the 1902 amendment one of the "particulars" of the compensation was the market value at the date of the s 5 declaration. If a s 3(1) notification had been published whether within 6 months earlier or at any time at all it would not have made any difference to the date at which the market value was to be ascertained. Any scheme loss attributable to the publication of the s 3(1) notification would have been reflected in the market value at the date of the s 5 declaration and in accordance with the plain words of the statutory provision this was the market value, depressed as it must have been by the publication of the s 3(1) notification, which had to be taken into consideration.

(43) The position under the 1890 Ordinance was altered by the 1902 amendment where the s 3(1) notification was followed within 6 months of its publication by a s 5 declaration. In such a case it was the market value at the date of publication of the s 3(1) notification that was to be taken into consideration. This was also the position under the 1920 Ordinance. The difficulty with alternative dates, which will be referred to later, is that at the acquisition date the acquired land might have been affected by the earlier publication of the s 3(1) notification or of a scheme which had an effect on its market value and at those dates the state and condition of the acquired land and market conditions generally might have been different. The market value of the acquired land as at the date of publication of the s 3(1) notification might well have been the market value of the acquired land in the same state and condition and subject to the same s 3(1) notification and the underlying scheme as it was at the acquisition date but under market conditions prevailing at the date of publication of the s 3(1) notification. This position was to continue until the 1967 Act came into force.

1967 Act

(44) Section 33 of the 1967 Act has been referred to above and is reproduced for convenience. It 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 ....

This provision has remained unchanged since the Act came into force save for the statutory dates in s 33(1)(a)(i).

(45) Under the 1967 Act where the s 3(1) notification is followed within 6 months of its publication by a s 5 declaration the market value to be taken into consideration is the market value as at the statutory date or the date of publication of the s 3(1) notification or the acquisition date *whichever is the lowest*. As pointed out above at the acquisition date the acquired land may be affected by the earlier publication of a s 3(1) notification or of any scheme which has an effect on the market value and the state and condition of the acquired land and market conditions generally prevailing at the acquisition date may be different from those at one or the other of the earlier dates.

(46) In *Collector of Land Revenue v Ang Thian Soo* [1990] SLR 11 Chan Sek Keong J (as he then was) (delivering the judgment of the Court of Appeal) said at p 18:

> The acquired house will have to be evaluated as at 30 November 1973 in its acquired state and condition as if it were in that state and condition on 30 November 1973. In our view, this is the true meaning of the first limb in s 33(1)(a). It is consistent with the language thereof. It achieves the object of the provision to enable the government to acquire land at its 1973 value but also at the same time to compensate landowners for improvement made to land after 1973 to an extent limited to their 1973 values.

The relevant statutory date in that case was 30 November 1973. The market value of the acquired land as at 30 November 1973 had to be determined, as if at that date the acquired land was in the same state and condition that it was in at the acquisition date. The market value so determined would then be compared with that as at the acquisition date and the lower would then be taken into consideration. By the same reasoning if there was a s 3(1) notification which had been followed within 6 months of its publication by the s 5 declaration then the market value of the acquired land as at the date of publication of the s 3(1) notification would also have had to be determined as if the acquired land was then in that same state and condition.

(47) There can be no easy answer but it appears that the market value of the acquired land as at one of two or three different dates whichever is the lowest must be the market value of the acquired land in the same state and condition as it is in at the acquisition date and also subject to any published scheme affecting it at the acquisition date but subject to the market conditions prevailing at the relevant date. Such a scheme would include a scheme involving road lines as in the case of this appeal and one announced through the publication of a s 3(1) notification including the publication of the notification itself.

(48) A scheme loss attributable to the publication of the s 3(1) notification or the underlying scheme will be reflected in the market value as at the acquisition date. It will also be reflected in the market value as at the earlier dates if it is to be determined as if the acquired land were subject to the published scheme affecting it at the acquisition date. This market value is likely to be lower than it would have been if no s 3(1) notification had been published or if the scheme had not been otherwise announced and it is the lowest of the depreciated market values that in the plain words of the statutory provision will have to be taken into consideration. If the

s 3(1) notification is followed by a s 5 declaration more than 6 months after its publication it is likely that the scheme loss attributable to the s 3(1) notification will also be reflected in the market value as at the later acquisition date with the same result.

(49) There will also be a scheme loss resulting from the scheme of which the acquisition forms an integral part being announced or otherwise becoming known to the market without a s 3(1) notification having been published or before it is published. In the event of acquisition under the 1967 Act the market value as at the statutory date or the date of the later publication of the s 3(1) notification (if any) when a scheme loss would already have arisen or the acquisition date whichever is the lowest will be taken into consideration. This is well illustrated by the drawing of road lines as in this appeal. Another example is the announcement of a Selective En-Bloc Redevelopment Scheme.

(50) The 1967 Act has made other provision for matters to be taken into consideration and matters not to be taken into consideration and by an amendment in 1973 introduced s 33(5)(e) that puts a limit on the market value in these terms:

> (5) For the purposes of subsection (1)(a) -
>
> ...
>
> (e) the market value of the acquired land shall be deemed not to exceed the price which a bona fide purchaser might reasonably be expected to pay for the land on the basis of its existing use or in anticipation of the continued use of the land for the purpose designated in the [Master Plan], whichever is the lower, after taking into account the zoning and density requirements and any other restrictions imposed under the [Planning Act] and any restrictive covenants in the title of the acquired land, and no account shall be taken of any potential value of the land for any other more intensive use ....

In 1998 the words in square brackets were amended to "Development Baseline referred to in section 36 of the Planning Act 1998" and "Planning Act 1998" and this was the position as at the acquisition date in this appeal. In the case of land with a lawful existing use the value of all "potentialities to the owner" even as possibilities only have been effectively excluded and where there is no existing use these potentialities have been quite substantially restricted. In either case what the bona fide purchaser might reasonably be expected to pay for the land will not include the scheme loss.

(51) To construe the 1967 Act to exclude the scheme underlying the acquisition in the determination of the *market value* of the acquired land would be to fly in the face of the express provision to take into consideration the market value and other matters mentioned in s 33 and no others and for the market value to be determined as at one of two or three specified dates at which it is the lowest and as limited by the provision in s 33(5)(e). It appears that the 1890 Ordinance introduced a code for the determination of the amount of compensation and this code in its modified form is now contained in the 1967 Act.

(52) Formal contracts for the sale of land usually provide for road lines. Where the land is adversely affected by a road line the contract may go off at the option of the purchaser. The ordinary investigations that lawyers acting for purchasers carry out include the purchase and consideration of a RLP and if this reveals a road line affecting the land the lawyers would be bound to advise on the effect of the road line or risk an action for negligence. To compensate for a road line scheme loss whether in the determination of the market value or in the determination of the amount of the compensation would be to give value for that which the market has discounted.

(53) If the *Pointe Gourde* principle in reverse is an English common law principle of valuation or of determining the market value of the acquired land then it is clearly inconsistent with the 1967 Act and the body of legislation before it relating to the compulsory acquisition of land beginning with the 1890 Ordinance and there has been no change in the law in this respect since 12 November 1993. That principle if it was received into Singapore when land acquisition was introduced by the 1857 Act ceased to be part of the law of Singapore when the 1890 Ordinance came into force. If not when the 1890 Ordinance came into force then when the 1967 Act came into force. The principle was not part of the law of Singapore immediately before 12 November 1993 and is not applicable for the purpose of determining the market value of the land acquired under the 1967 Act. This part of the appellant's case fails but the case has been put on a wider basis. It is said that the Collector has erred in the determination of the amount of the *compensation*.

Scheme Loss & Compensation

(54) Land is a valuable asset and when it is acquired for a purpose specified in s 5 all persons interested are entitled to compensation as provided under the 1967 Act. A scheme loss will arise if a s 3(1) notification is published and this will be so whether it is followed by the s 5 declaration within 6 months or more than 6 months later. A scheme loss will arise if a scheme is announced before the s 5 declaration is made. The scheme may be announced through the publication of proposals to amend the Master Plan or the adoption of a Development Guide Plan. It will also arise if road lines are drawn which adversely affect the land in question as in this appeal and the road lines come to be known. The single common feature of a scheme loss is action by the government or a government agency or a public authority acting in what is or what may be seen to be in the public interest.

(55) A scheme loss will not attract compensation if the *Pointe Gourde* principle in reverse is an English common law principle of valuation. It will if it is a principle of compensation and the determination of its amount (notwithstanding that the scheme loss may be measured in relation to the market value) and if the principle is part of the law of Singapore. The point as to its applicability to Singapore has not been decided but there are statements in *Chew Ming Teck* which may suggest that the principle applies. The 1967 Act and the earlier legislation do not in terms exclude the principle and s 34(d) of the 1967 Act excludes from consideration the post-acquisition date damage but not the pre-acquisition date damage.

(56) This Board has not heard argument on the question whether the *Pointe Gourde* principle in reverse is a principle of valuation or of compensation although counsel were invited consider the question. Notwithstanding the disadvantage of not having

counsel's assistance in this respect this Board is of the view that it is a principle of compensation and not of valuation.

(57) A scheme loss can only arise as a result of action by the government or a government agency or a public authority as pointed out above. The question arises whether it can be said that "if the [person interested] is to be *fairly compensated* [italics added] scheme losses should attract compensation". See *Shun Fung Ironworks*. There are or may well be existing safeguards against the consequences of executive excess or abuse and there may be no "underlying reasoning" for the *Pointe Gourde* principle in reverse to apply. The situation in *Muhammad Ismail* cannot arise as under s 17(2) a s 5 declaration has to be published not later than 7 days after the Collector has taken possession of the land but the market value as at the acquisition date must be adversely affected and there will be a scheme loss.

(58) The Indian Land Acquisition Act provides for the market value of the land as at the date of the publication of the notification under s 4(1) (s 3(1) notification under the 1967 Act of Singapore) to be taken into consideration. There are no alternative dates. There can be no scheme loss attributable to the publication of the notification. At the same time s 24 provides:

> Matters to be neglected in determining compensation - But the court shall not take into consideration -
>
> ...
>
> *fourthly*, any damage which is likely to be caused to the land acquired, after the date of the publication of the use to which it will be put ....

A scheme loss attributable to the *publication of the use* such as by the announcement of a scheme will not attract any compensation. There can hardly be an occasion for a scheme loss to arise and which is not expressly provided for and it is difficult to see that there is any room left for the application of the *Pointe Gourde* principle in reverse or any "underlying reasoning" for it and perhaps not surprisingly Aggarwala (*op cit*) only refers to *Muhammad Ismail* in this respect. When *Muhammad Ismail* was decided "declaration under section 6 [(s 5 declaration under the 1967 Act of Singapore)] caused by or in consequence of the" followed immediately after "the date of the publication of the". This left a time interval between the publication of the use to which the land will be put and the publication of the declaration. The interval was removed by the deletion of those words by an amendment made subsequently.

Questions For Opinion

(59) The questions for the opinion of the Court of Appeal may now be respectfully stated as follows:

> 1 Is the *Pointe Gourde* principle in reverse part of the law of Singapore?
>
> 2 If the answer to Question 1 is "Yes" -

(a) for the purpose of determining the amount of compensation to be awarded for the acquired land under s 33 of the 1967 Act, should the loss in value of the acquired land attributable to:

(i) the publication of a s 3(1) notification, if any,

(ii) the scheme underlying the acquisition,

(iii) the 1983 road line, or

(iv) the 1995 road line,

be compensated for?

(b) for the purpose of determining the market value of the acquired land under s 33(1)(a) of the 1967 Act, should the loss in value of the acquired land attributable to:

(i) the publication of a s 3(1) notification, if any,

(ii) the scheme underlying the acquisition,

(iii) the 1983 road line, or

(iv) the 1995 road line,

be compensated for?

3 If the answer to Question 1 is "No" -

(a) for the purpose of determining the amount of compensation to be awarded for the acquired land under s 33 of the 1967 Act, should the loss in value of the acquired land attributable to:

(i) the publication of the s 3(1) notification, if any,

(ii) the scheme underlying the acquisition,

(iii) the 1983 road line, or

` (iv) the 1995 road line,

be compensated for?

(b) for the purpose of determining the market value of the acquired land under s 33(1)(a) of the 1967 Act, should the loss in value of the acquired land attributable to:

(i) the publication of the s 3(1) notification, if any,

(ii) the scheme underlying the acquisition,

(iii) the 1983 road line, or

(iv) the 1995 road line,

be compensated for?

Dated 2002 March 7

T Q Lim
Commissioner of Appeals