

LAND ACQUISITION ACT

APPEALS BOARD

AB 1997.087

In the Matter of the Acquisition of Land at
Lot 529 of Mukim 17
65 Upper Serangoon Road

Between

1 Syed Taha bin Salim Albar, the Administrator of
the Estate of Andi Abdul Hafeez bin Haji Daing bin
Mandak @ Abdul Hafeez bin Daing bin Mandak @
Abdul Hafiz D. A. Bogas, deceased

... 1st Appellant

2 Mohamed Bakri bin Mohd Kassim and Tohani @
Rohani binti Mohd Kassim, the Trustees of the Estate of
Hajjah Andek Nurong @ Hajjah Andek Noor binti Hj
Daing @ Andi Noor binti Abdul Aziz Daing, deceased

... 2nd Appellants

And

Collector of Land Revenue

... Respondent

DECISION

The decision of this Board is:

(1) That the award of the Collector of Land Revenue of compensation in an amount of \$3 600 000 in respect of the land at Lot 529 of Mukim 17 apportioned as to \$2 400 000 to the first appellant and as to \$1 200 000 to the second appellants be increased to \$8 928 000 and that the same be apportioned as to \$5 952 000 to the first appellant and as to \$2 976 000 to the second appellants;

And

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

And

(3) That the deposit paid by the appellants be repaid to them;

And

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

BRIEF STATEMENT OF REASONS

The reasons for the Decision/Order are:

Appeal

(1) On 28 June 1996 ("acquisition date") a notification was published in the *Gazette* of a declaration made under s 5 of the Land Acquisition Act ("s 5 declaration") that the land at Lot 529 of Mukim 17 ("acquired land") was required for a public purpose namely North-East MRT Line and Comprehensive Development. The respondent ("Collector") concedes that the appellants are entitled to compensation for the acquired land as reversionary owners contingent upon a lease to Shell Singapore (Pte) Ltd ("Shell" which expression includes its successors in title in respect of the acquired land) dated 18 July 1989 and registered in the Registry of Deeds as Volume 2434 Number 40 ("Shell Lease") and it follows that for the purpose of this appeal they were at the acquisition date persons interested. The Collector further agrees that this Board may make an award in favour of the first appellant or the second appellants or both as this Board sees fit notwithstanding that the first appellant is described as a single administrator.

(2) For the purpose of the inquiry held under s 10 the appellants submitted a claim of \$27 993 000 for compensation. The claim comprises \$26 660 000 for the market value of the acquired land and \$1 333 000 for expenses under s 33(1)(e). On 20 February 1997 the Collector made an award of compensation in the amount of \$3 600 000 for the acquired land and apportioned it as to \$2 400 000 to the first appellant and as to \$1 200 000 to the second appellants.

(3) The appellants appeal against the award on the ground that the award is manifestly inadequate and unrealistic and on other grounds stated in their petition of appeal. In the course of the hearing the appellants amended their claim to \$19 850 938 and withdrew their claim for expenses under s 33(1)(e). The Collector does not seek to support his award and at the hearing adduced evidence that "the market value of the [acquired land] (excluding the Value of Improvements), subject to the [Shell lease], as a petrol service station site as at 1 Jan 1995" was \$9 500 000 and proposed compensation in that amount which was not accepted. At the hearing Mr Tan of counsel for the Collector explained that improvements were excluded as it was the Collector's case that they had no value and the issue before the Board was whether they had any value and if so what that value was. Later the Collector adduced evidence that the market value of the appellants' interest was only \$6 060 000.

Acquired Land

(4) The acquired land is a near rectangular plot at Upper Serangoon Road. The site area is 1 788.8sm. The frontage to Upper Serangoon Road is about 57m and its depth is about 31m. It is zoned Local Shopping in the Master Plan and at the acquisition date and for some years prior to that it was used for a petrol service station. Written Permission was granted on 12 April 1971 under the planning legislation then in force for rebuilding of the then existing petrol service station. In the

Toa Payoh Planning Area Planning Report 1995 published in January 1995 by URA the acquired land was designated for commercial/residential development.

(5) The acquired land is located on the West side of Upper Serangoon Road. Lot 2438 to the immediate South separates the acquired land from the junction of Upper Serangoon Road and Meyappa Chettiar Road. As appears from the road line plan ("RLP") which shows the best information available to the then Roads and Transportation Division of the PWD on 5 December 1994 there was a detached building on Lot 2438 and the building was still there at the acquisition date. The developments in the vicinity at the acquisition date were largely mixed with schools, shops, food centres, markets and places of worship and the HDB estates of Potong Pasir and Geylang/Kallang Bahru and private landed properties nearby. Sennett Estate was just to the East across Upper Serangoon Road.

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

The s 3(1) notification was published on 4 March 1996 and the s 5 declaration in respect of the same land was published within 6 months later on 28 June 1996 (the acquisition date as noted earlier) and it is common ground that the market value as at 1 January 1995 was the lowest and it is the market value as at 1 January 1995 that among other matters has to be taken into consideration.

Petition of Appeal

(7) In para 5 of his grounds of award dated 3 July 1998 lodged pursuant to s 23(2) the Collector said:

b The market value of the [acquired land] is based on petrol station use. [The acquired land] was reassessed at \$3 081/sm (land and improvements) with effect

from 11 Sep 1995 for property tax purposes. This is the best guide to the market value of the [acquired land].

He did not say what he found the market value to be but as the site area was 1 788.8sm it appears that he adopted a value of about \$5.5m following the "best guide". He went on to say:

Compensation to the [appellants] is based on the sum of the capitalised rental receivable for the unexpired lease term and the reversionary interest

d The [appellants'] interest of [the acquired land] is estimated to be \$3 600 000 (with vacant possession)

(8) In para (e)3 of their petition of appeal the appellants say that the Collector's "best guide" is erroneous. The Collector has adduced no evidence to support the "best guide" and he now says that the market value "of the [acquired land] (excluding the Value of Improvements), subject to the [Shell lease], as a petrol service station site as at 1 Jan 1995" was \$9 500 000 as noted above.

(9) The Act provides:

5 (1) Whenever any particular land is needed -

(a) for any public purpose;

...

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

...

8 (1) The Collector shall then cause notices to be posted ...stating -

(a) that the Government intends to acquire the land; and

(b) that claims to compensation for all interests in the land may be made to him.

...

(3) Every such notice under subsections (1) and (2) -

...

(b) shall require all persons interested in the land -

...

(ii) to state the nature of their respective interests in the land, the amount and particulars of their claims to compensation for those interests.

...

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

...

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

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

(10) It is quite clear that the Act contemplates one award of compensation *for the acquired land*. While the Collector said in his award that the compensation for the acquired land was or should in his opinion be \$3 600 000 he said in his grounds of award that \$3 600 000 was compensation for the appellants' interest which is really different. It is quite clear also that the Act contemplates an apportionment of the compensation for the acquired land in the same award among *all the persons interested* of whom or of whose claims the Collector has information. Such persons would include the appellants and Shell but neither the award nor the grounds of award state any such apportionment between them.

(11) In para (e)(1) of the petition of appeal the appellants say that the award is manifestly inadequate and unrealistic and in para (e)(4)(c) they say that the Collector has erred in not giving any or adequate consideration to the sale of petrol station sites.

Appellant's Valuation

(12) Mrs Lydia Sng of Knight Frank Pte Ltd testifying for the appellants adopted the direct comparison or inference from past transactions approach to determine the value of the acquired land. She referred to the following transactions:

<i>Location</i>	<i>Land Area (sm)</i>	<i>Tender Closing Date</i>	<i>Highest Tender Bid</i>
1 Tampines Ave 9 (Mobil)	3 263 gross 2 200 effective	30 Jun 1994	\$21 288 889 \$9 677/sm
2 Marsiling Rd (Shell)	2 000	22 Jun 1995	\$22 599 000 \$11 300/sm
3 Jurong West St 93 (Caltex)	2 500	22 Jun 1995	\$24 300 000 \$9 720/sm

These are not sales in the open market but tenders for leases submitted by the oil companies mentioned and accepted by a public authority as the freehold owner. The tenders were for 30 year leases of new sites. The site area rate of \$9 677/sm for the Tampines Ave 9 property is based on the effective site area of 2 200sm. The highest tender bids represented the premia or prices at which the properties were transacted.

(13) Mrs Sng made adjustments to the site area rates for the differences between the reference properties and the acquired land including -50% for location and +70% for tenure to convert 30 years leasehold to freehold and found that the average adjusted site area rate was \$12 154/sm giving a value of about \$21 700 000 at 1 January 1995 prices. She deducted \$2 000 000 for Shell's interest and added the date of possession value of the improvements (which would fall into possession at the expiry of the Shell lease) of \$150 938 to obtain the value of \$19 850 938. This value included the underground tanks. The acquisition date value of the improvements without the tanks amounted to about \$128 000 which would result in \$19 828 000 for the market value of the acquired land excluding the interest of Shell.

(14) Mrs Sng's alternative approach was to value the appellants' interest in the Shell lease and to add to that the acquisition date value of the reversionary interest in land with a market value of \$21 700 000 at 1 January 1995 prices. The Shell lease had a balance of 6.5507 years to run as at the acquisition date and reserved the monthly rent of \$13 000 which was below the market rent according to Mrs Sng. Assuming a discount rate of 2%/yr for the remainder of the lease the acquisition date value of the rent accruing under the Shell lease was \$948 943 and assuming a discount rate of 3%/yr for the reversion the acquisition date value of the reversion was \$17 879 984 for a total of \$18 828 927 for the value of the appellants' interest.

Collector's Valuation

(15) Mr Tan said that the Collector adopted two approaches in the valuation. The first approach assumed that the market value of the acquired land was the sum of the value of the remainder of the lease and the value of the reversion. The second assumed that the market value was the sum of the value of the remainder of the lease (as in the first approach), the value of a 30 year lease from the expiry of the Shell lease and the value of the reversion after the expiry of the assumed 30 year lease.

(16) Ms Chua Beng Ee of Inland Revenue Authority of Singapore testifying for the Collector found that the acquisition date value of the rental income for the remainder of the lease was \$824 983. She adopted a discount rate of 6%/year. She further "worked" it back to 1 January 1995 for the value of \$756 183. This Board should say at once that this is not the value for the purpose of determining the market value as at 1 January 1995 under s 33(1)(a). In Ms Chua's approach a component part of the market value is assumed to be the present value of the whole of the periodical payments by way of the rent payable under the lease for the remainder of the term. The "present value" for this purpose is the amount which if invested at a rate of return equivalent to the discount rate should produce a periodical return equivalent to the periodical rent. It is the value at the commencement of the period under consideration. In the present case it is the value at the acquisition date. It is the rent that has to reflect prices prevailing at 1 January 1995 and that rent has to be adjusted where necessary. In the present case no adjustment is necessary as the Shell lease commenced 7 years earlier in January 1988 and reserved a fixed rent throughout the term of 15 years and there is no evidence to suggest that the rent reserved for any part of the term was higher than the market rent prevailing at January 1995.

(17) For the value of the reversion Ms Chua referred to the following transactions:

<i>Location</i>	<i>Date</i>	<i>Premium</i>	<i>Sales (lit/year)</i>
1 Tampines Ave	Jun 1994	\$21.3m	14.6m
2 Choa Chu Kang Way	Nov 1995	\$30.3m	18.3m
3 Pasir Ris Drive 1	Nov 1995	\$25.7m	16.4m

As in the case of the transactions referred to by Mrs Sng these transactions were also tenders which were accepted by a public authority as the freehold owner but they were all tenders submitted by Mobil. The sales represent the projected throughput as estimated by the oil company as she was informed by an officer of the oil company. The date is the date when tenders closed.

(18) The throughput rates derived from the sales and the premia were \$1.42/lit for transaction 1, \$1.66/lit for transaction 2 and \$1.57/lit for transaction 3 but Ms Chua adopted a rate of \$1.65/lit as at 1 January 1995. She applied the throughput rate of \$1.65/lit to the average annual throughput of the acquired land for the three years to 1995 of 5 128 000 lit/year to obtain the value of \$8 461 228. She was informed of the throughput of the acquired land by an officer of Shell. She then adjusted this for tenure to obtain the freehold value of \$14 102 047. She discounted this to 1 January 1995 from the expiry of the Shell lease at 6%/yr for a value of \$8 847 799. Again this Board will say at once that the value of \$14 102 047 in the future should be discounted to the acquisition date for the present value. The throughput rate and the annual throughput have been determined for 1 January 1995 and there is no necessity to make any adjustment for 1 January 1995 prices. Assuming the Shell lease to have another 6.5507 years left at the acquisition date and assuming a discount rate of 6%/yr the acquisition date value should be \$9 627 445 which added to the value of the remainder of the Shell lease of \$824 983 should give the total value of \$10 452 428 for the market value of the appellants' interest in the acquired land on the basis of the Collector's approach.

(19) For Ms Chua's second approach she adopted the value of the remainder of the Shell lease and the value of the reversion for 30 years from the expiry of the Shell lease without adjusting for tenure and added the sum of the two values to the remainder of the reversion after the 30 years. The acquired land was at the acquisition date so adversely affected by the RLP that it was improbable that it could be re-developed and in the circumstances Ms Chua assigned no value to it for the remainder of the reversion after 30 years. She obtained the final value of about \$6 060 000 for the market value of the appellants' interest in the acquired land. If the present values of the remainder of the Shell lease and of the reversion of 30 years were taken at acquisition date and at 1 January 1995 prices the final value should be about \$6 600 000.

Throughput Rate

(20) The successful tenders referred to by Ms Chua were submitted by another oil company as noted above and the information on projected throughput was given to Ms Chua during a presentation given by an officer of that company and there is no evidence that any of the appellants or their advisers or agents were present when the information was given. No representative of the oil company gave any evidence as to the tenders or at all. Ms Chua referred to the same successful tenders during the hearing of another appeal before this Board in the course of which evidence of conflicting statements made by another officer of the same company as to the sales was given by another witness. Under s 25(4)(d) this Board may admit as evidence the statement of the sales referred to in the successful tenders notwithstanding that it may not be admissible under the Evidence Act but having regard to the circumstances of this case it would be wrong to rely on it as evidence of the projected throughput in these transactions. It would equally be wrong to rely on the statement as to the throughput of Shell.

Market Value

(21) At the acquisition date the acquired land was used for a petrol service station. It was adversely affected by the RLP and was so substantially affected that it was improbable that written permission under the Planning Act would be granted for any re-development for better use of the acquired land. The existing buildings may be maintained and repaired depending on the nature and extent of the works and more importantly the petrol and oil pumps may be re-aligned as may be necessary for better customer service. On the evidence this Board finds that at the acquisition date the most probable use of the acquired land was its then existing use for a petrol service station and the most probable buyer if the acquired land were exposed for sale in the market then current would be either an investor who would let the acquired land to an oil company for continued use for a petrol service station without re-development requiring written permission under the planning legislation or such an oil company itself.

(22) In her primary approach in the valuation of the acquired land Mrs Sng referred to the successful tenders for new petrol service station sites for comparison. The adjustment of +70% for tenure is excessive as noted below but it is not disputed that some positive adjustment has to be made. Even in Ms Chua's second approach which resulted in a much lower market value she added the value of the remainder of the Shell lease to a presumed 30 year lease. There is no evidence pointing to an adjustment of -50% for location but here again there is no dispute that some negative adjustment has to be made. Finally Mrs Sng has not allowed for the effect of the RLP but it is also not in dispute that it must have an adverse effect and a negative adjustment has to be made for this. In both her first as well as her second approach Ms Chua relied on the throughput rate as to which there is no evidence that this Board can rely on and this Board is left with only Mrs Sng's primary approach.

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

- (a) that for the purpose of s 33(1)(a) the market value of the acquired land was the lowest as at 1 January 1995;

(b) that the market value of the acquired land as at 1 January 1995 was \$10 800 000 plus the value of the improvements and that Shell's interest was \$2 000 000;

(c) that the market value so found does not exceed the Master Plan use price or the existing use price determined in accordance with s 33(5)(e);

(d) that the value of the improvements was \$128 000;

Discount Rate

(24) In the decision that this Board has arrived at it is unnecessary to determine the discount rate but having regard to the evidence that has been adduced and the submissions of counsel for both parties it is right that this question should be considered and this Board will do so. A discount rate is the rate of interest which has to be applied to some future anticipated return in order to calculate the amount an investor would pay to receive that return. See Australian Institute of Valuers and Land Economists (Inc), *Valuation Principles and Practice* (1997) at p 265. The future anticipated return is a monetary value which may be an amount receivable periodically as in the case of rent under the remainder of the Shell lease or a monetary value that will fall into possession at some future date as in the case of the value of the reversion.

(25) Mrs Sng referred to a petrol service station site at 353 Upper Thomson Road comprised in a lease to an oil company at the yearly rent of \$742 444 from December 1994 to June 1999 and the yearly rent of \$800 000 from July 1999 to June 2029. She adopted the same primary approach to determine the market value of the Upper Thomson Road site as in the case of the acquired land which was the direct comparison or inference from past transactions approach and she referred to the same transactions. She made adjustments for differences including +70% for tenure to convert from 30 years leasehold to freehold. The site area was 1 338.3sm. She found that the market value of this site was about \$16 950 728 as at December 1994. Given that the yearly rent as at the same time was \$742 444 the yield was found to be about 4.4%/yr.

(26) Referring to Mrs Sng's analysis of the yield factors for the Upper Thomson Road site Ms Chua said that the adjustment for tenure should be +38% in which case the yield derived would be 5.9%/yr. Presumably she would have objected to the same adjustment of +70% in regard to the site area rate which was used to determine the market value of the acquired land in Mrs Sng's primary approach. Both Mrs Sng and Ms Chua referred to Bala's table and the table shows that a 30 year leasehold site has 60% of the value of a freehold site. The appropriate rate of adjustment to convert from 30 years leasehold to freehold is accordingly +67%.

(27) Rates of adjustments are determined on the basis of all other things being equal and should be applied on the same basis but here one other thing is quite substantially not equal. In each case there is an adjustment of -50% for location. All other things being equal the site area rate has to be adjusted by about +67% for tenure and this can be achieved by adjusting by +67% the net (before adjusting for tenure) adjusted site area rate. On this basis the average site area rate is about \$9

191/sm resulting in a market value of about \$12.30m for a yield of 6.04%/yr. It should come as no surprise that if the process is reversed and the net (before adjusting for location) adjusted site area rate is adjusted by -50% for location the result will be different. The average site area rate is then about \$8 738/sm resulting in a market value of about \$11.69m for a yield of 6.35%/yr.

(28) Mrs Sng adopted a discount rate of 2%/yr for the remainder of the Shell lease and 3%/yr for the reversion. She thought the rent under the Shell lease was low while the rent of the Upper Thomson Road site was above the market rate. This may well be so but the rent in each case was what the parties agreed to and the particulars of these transactions provide the best evidence of the market rent. On the evidence this Board would have found that the annual yield from a letting of land for petrol service station use between December 1994 and the acquisition date was 6% and the discount rate was 6%/yr.

Award

(29) After taking into consideration the market value as at 1 January 1995 this Board determines that the amount of compensation to be awarded for the appellants' interest in the acquired land is \$8 928 000 and that such compensation be apportioned as to \$5 952 000 to the first appellant and as to the remaining \$2 976 000 to the second appellants. The compensation is less than that proposed by the Collector but which was not accepted and was clearly based on the Collector's first approach which does not appear to have given adequate consideration to the RLP. However the compensation exceeds the amount of the Collector's award and this Board orders that the Collector pay to the appellants the excess together with interest at the rate of 6% per year from the date of taking possession to the date of payment.

Costs

(30) For the purpose of the inquiry held under s 10 the appellants made a claim of \$27 993 000. This was a claim made pursuant to the Collector's notice under s 8 and as it exceeds the amount awarded by this Board by more than 20% the appellants are not entitled to their costs.

Dated 2002 September 12

Commissioner of Appeals T Q Lim
Assessor Lim Sean Teck
Assessor Wong Chak Wai