

26, 1980

No. 11 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

B E T W E E N:

HOWE YOON CHONG

Appellant

- and -

10 THE CHIEF ASSESSOR, PROPERTY TAX,
SINGAPORE

Respondent

CASE FOR THE APPELLANT

RECORD

1. The subject matter of this appeal is the assessment for Property Tax of a vacant plot of land at Peck Hay Road, Singapore. On 1st October 1973 (the material date for these proceedings) the Respondent made a proposal to amend the Valuation List by increasing the assessment of the land from annual value Singapore \$1340 to annual value Singapore \$26,000. The Appellant, as owner, objected to the proposal and appealed against it to the Valuation Review Board, which on 10th December 1975 dismissed the appeal and confirmed the assessment. The Appellant appealed to the High Court of Singapore, which on the 21st January 1978 allowed the appeal and discharged the assessment. The Respondent appealed to the Court of Appeal of Singapore, which on 20th November 1978 allowed the appeal and restored the assessment. The Appellant, with leave of the Court of Appeal of Singapore, now appeals to the Judicial Committee of the Privy Council.
2. The land in question is an irregularly shaped plot of backland known as T.S. Lot No. 61-134. It is shown on the site plan (Exhibit A2), where it is marked with a red verge. It is unbuilt on and unused.

Record, P.4

Record, P.24

Record, P.52

Record, P.77

Record, P.78

Record, P.80

RECORD

Record P.81

It has no building frontage to Peck Hay Road, but is connected thereto by an access strip about 20 ft. wide. The plot has an overall area of 14,875 sq.ft., of which about 2,400 sq.ft. comprises the access way, and about 3405 sq.ft. comprises steep banks which cannot be built upon. Exhibit A2 contains some photographs of the property the position from which they were taken is stated in the passage beginning on P.16, line 32 of the Record.

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3. At the rear of the land there is a steep bank about 20 ft. high, along the top of which runs a private unmade road. There is no right of way in favour of the subject land over the private road, and it is not in dispute that physical access thereto would be impossible owing to the difference in levels.

4. Between the land and Peck Hay Road is Lot No.61-126, which at the material date had planning permission for a ten-storey block of flats, which has since been built. No planning permission existed for the development of the subject land.

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5. The Appellant, at the material time and until recently, held the post of Head of the Singapore Civil Service as well as that of Chairman and Chief Executive of the Port of Singapore Authority, and other public offices. He has relinquished these appointments to become a Member of Parliament and the Minister of Defence in the Singapore Government. He has always made it clear that he does not object to an increase in the assessment of his land provided it is (a) lawfully made and (b) fair in relation to the other assessments in the Valuation List. In his official capacity he has over many years made known and pressed his view that the Valuation List in Singapore is unfair, unequal, and inadequately administered and he has sought to promote reforms thereof. In a small island city state (population, 2.2 million) with a strong Government, the tax-collecting bureaucracy exercises overwhelming powers. One department (the Inland Revenue) is responsible for property tax, income tax, estate duty, stamp duty and other revenues; the department also controls the licensing of valuers, estate agents and auctioneers, and is the official valuer for all government land transactions. All records are centralised. The position is reached where the tax-collector can (whether by intention or inadvertence) be discriminatory, with the consequence that the

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constitutional guarantees of equality before the law and the equal protection of the law are negated. The Appellant considers that his own case demonstrates the inadequacies of the administration of taxation in Singapore. He hopes and desires that in the course of securing the fair and lawful assessment of his own land in these proceedings, he may secure for all citizens of Singapore the fair and equal and up-to-date Valuation List to which all of them are by law entitled.

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6. The Property Tax Act (CAP. 144 of the Revised Edition of the Laws of Singapore) was passed on 1st January 1961 and is described in the preamble as "An Act to provide for the levy of a tax on immovable properties in lieu of the rates previously leviable by local authorities and to regulate the collection thereof." For the purposes of these proceedings, the Act to be applied is the Act as amended by the Property Tax (Amendment) Act, 1973 which came into operation on 17th August 1973. The reference in the preamble to "rates previously leviable" is a reference to the previous Municipal Ordinance when a rating system was in force.

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7. S.6 of the Act provides that property tax shall be payable by the owner at a specified rate for each year upon the annual value of "all houses, buildings, lands and tenements whatsoever included in the Valuation List". Annual Value is defined in s.2 of the Act as the gross amount at which the land can reasonably be expected to let from year to year on certain terms, but gives the Respondent the option to adopt as annual value the sum which is equivalent to the annual interest at five per cent on the estimated value of such land. This option is applied in cases of unbuilt on land (inter alia) and was applied in this case.

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8. Ss.9 - 17 of the Act provide for annual Valuation Lists. s.9 requires the Respondent to cause to be prepared a Valuation List of "all houses, buildings, lands and tenements." By s.10 the Respondent has a discretion either to cause to be prepared a new valuation list every year, or to adopt the Valuation List then in force, with such alterations and amendments as may have been made from time to time in accordance with the provisions of the Act. It is common ground that since the Act was in force the Respondent has adopted the second alternative, and has each year carried forward the previous valuation list. In particular the Valuation List for 1973 was the previous list as altered and amended.

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9. S.11 of the Act provides for the publication in August each year of the Valuation List for the coming year, and confers on the public a right of inspection for 28 days. S.12 provides a right of objection, and if the objection is disallowed a right of appeal to the Valuation Review Board. S.12 also provides for the List to come into force on the 1st January next ensuing.

10. Ss. 18 and 19 provide for the amendment of a Valuation List in certain circumstances and in accordance with a specified procedure. The Respondent's proposal in the present case was made under s.18(2) of the Act and was for the amendment of the 1973 Valuation List.

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11. Article 8(1) of the Federal Constitution of Malaysia, applied by s. 6(1) of the Republic of Singapore Independence Act, 1965, provides: "Equality.

(1) All persons are equal before the law and entitled to the equal protection of the law."

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Record, P.1

12. The present proceedings arose from a Notice of Transfer served by the Appellant on the Respondent under s.17 of the Act. This gave notice that on 4th April 1973 one undivided half-share in the land had been transferred to the Appellant. No consideration passed, and the deed was stamped accordingly. The previous history of the ownership of the land and the circumstances of this transfer are set out in the judgment of A.P. Rajah, J., in the High Court; in brief, the Appellant had been the beneficial owner of the land since 1960, and the transfer in 1973 was of the bare legal estate only.

Record, P.38

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Record, P.4

13. Acting on this Notice of Transfer, the Respondent proposed the amendment of the Valuation List pursuant to s. 18(7)(a)(iii) of the Act, which provides that the Valuation List shall be deemed to be inaccurate in a material particular where the Chief Assessor is of the opinion that the annual value of a property included in the Valuation List does not correctly represent the annual value evidenced by..... "the consideration paid or value passing on the sale or transfer directly or indirectly of any estate or interest in that or similar property..." The proposal was for an increase of the assessment to \$26,000. The Appellant gave notice of objection to the said proposal, and the Respondent disallowed the objection. The Appellant thereon appealed to the

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Record, P.5

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Valuation Review Board, which heard and determined the appeal on 10th December 1975.

Record, PP.6,8

14. The Valuation Review Board comprised three members (Mr. T.S. Sinnathuray, Chairman, Mr. Lye Yuen Weng and Mr Kwee Thiam Sioe), none of whom was an expert in valuation. Prior to the hearing, the Respondent had submitted to the Board a report marked "Confidential" containing the facts of the case and his recommendation for the revision of the annual value, together with a valuation and list of comparable properties. It proposed an annual value for the land of \$26,000 arrived at by applying \$ 35 a sq.ft. to the overall area of the land (14,875 sq.ft.) giving \$ 520,625, which taken at five per cent gives \$ 26,000. This Report was supplied to the Appellant (in accordance with usual practice) for the first time on the morning of the hearing.

Record, P.11

15. The Appellant submitted (i) that the proposal to amend the valuation list was invalid because it was based on a Notice of Transfer which was not for valuable consideration, contrary to the wording of s.18(7)(a)(iii); (ii) that the valuation list itself was invalid because it did not contain all properties, and many valuations were not up-to-date; and (iii) that in any event Article 8 of the Constitution of Singapore required the list to be equal, and the Appellant was entitled to have his assessment in line with other comparable properties, whose annual value had not been updated to 1973. The Appellant called a qualified valuer (Mr. Ronald Chua) who gave evidence that the effective area of the land for development was not 14,875 sq.ft., but only 9,070 sq.ft., which he valued at 1973 values at \$ 25 a sq.ft. giving a capital value of \$ 226,750 and (at five per cent) an annual value of \$ 11,337. The Respondent called no evidence but referred to his report to the Board.

Record, P.16

16. In the course of the proceedings, the Appellant offered to tender evidence that the valuation list did not contain all properties, and that the annual values were in many cases not up-to-date. The Chairman of the Board said such evidence was unnecessary, as it was well known to everybody that the valuation lists were not complete or up-to-date. Accordingly, the Appellant did not call this evidence.

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- Record, P.19 17. The Valuation Review Board made no inspection of the land, and delivered oral grounds of decision at the close of the hearing. The Board made no decision on the Appellant's first and second points, and dismissed the third point relying on the decision of the Court of Appeal in England in Ladies Hosiery and Underwear Ltd. v. West Middlesex Assessment Committee (1932) 2 K.B. 679 that "correctness must not be sacrificed to uniformity." The Board rejected the evidence of the Appellant's valuer and said: "We are then left with the only other valuation that has been made, and, that is, by the Chief Assessor's representative that is set out in the Report to the Board." The Board dismissed the appeal and confirmed the proposed increased assessment. 10
- Record, P.24 18. The Appellant then appealed to the High Court pursuant to s.32 of the Act. That section provides that any appeal to the High Court shall be by way of rehearing. 20
- Record, P.154 19. Prior to the hearing in the High Court the Appellant endeavoured to obtain inspection of the 1973 and earlier Valuation Lists in order further to substantiate his contentions on the validity of the list. The Respondent refused to allow inspection of the lists except on payment of a fee of \$ 20 per entry, relying on the Property Tax (Fees) Regulations, 1975, which (whether by co-incidence or not) were made shortly after the decision of the Valuation Review Board in this case. The Appellant thereon took out a sub-poena for the production of the valuation lists in court. The Respondent applied to set aside the sub-poena as oppressive and vexatious. The application came before the Chief Justice who intimated his view that the Appellant should be allowed to inspect the lists, and made a consent order for an agreed limited inspection. The Appellant made a limited inspection a few days before the High Court hearing, but was unable in the time available to complete the work. The Fees Regulations have now been amended and the charge reduced. 30
- Record, P.157
- Record, P.66 20. In the High Court (A.P. Rajah, J.) the Appellant produced a written List of Issues for the Court. This List was also submitted to the Court of Appeal and is set out in the Judgment of that Court. The List is as follows:- 40
- (1) Does the rule in the Ladies Hosiery Case 50

(1932) 2 K.B. 679, namely that correctness must not be sacrificed to uniformity, apply in Singapore? The Appellant contends that it does not, because of (inter alia) Article 8 of the Constitution of Singapore which lays down that "all persons are entitled to the equal protection of the law".

10 (2) Assuming that the rule in the Ladies Hosiery Case does not apply in Singapore, what should the assessment be? The Appellant contends for an assessment of \$7,438.

(3) Assuming that the rule in the Ladies Hosiery Case does apply in Singapore, what should the assessment be? The Appellant contends for an assessment of \$11,157.

(4) The validity of the Chief Assessor's proposal to amend the Valuation List pursuant to S.18 of the Property Tax Act. i.e. was there a "transfer" for the purposes of S.18 (7)(a) (iii) of the Act.

20 (5) The validity of the Valuation List.

In his judgment, A.P. Rajah, J., says that the Appellant "primarily" relied on Issue 4. "Primarily" here means "firstly"; all the issues were fully argued by the Appellant and all were given equal weight and importance.

Record P.48
Line 20

30 21. The hearing in the High Court took four days (17th to 20th January, 1978) and Judgment was delivered on the fifth day (21st January). Both parties submitted evidence by affidavit and orally, and there was cross-examination. After the hearing the learned judge inspected the site and its surroundings, and some of the comparable properties, accompanied by representatives of the parties. In his Judgment he criticised the Valuation Review Board for having accepted the Respondent's Report as evidence when no witness was called to produce it and be cross-examined upon it. He said that if the Respondent chose not to give evidence, the Board should have drawn the proper inference. He said that the Board had not observed the principles of natural justice. He criticised the Respondent for resisting the Appellant's request to inspect the valuation lists, said that his reliance on the Property Tax (Fees) Regulations, 1975, was based on a misreading of them, and that the Appellant's sub-poena to produce the lists was properly issued.

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Record, P.38

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22. Dealing with the substance of the appeal, the learned judge held that the Appellant's fourth contention, namely that the proposal to amend the Valuation List was invalid, was correct, because the transfer of 4th April 1973 was not a transfer for valuation consideration. He recorded a concession of Counsel for the Respondent that it was the notice of transfer which "brought about" his action in amending the list. He pointed out that that disposed of the appeal in favour of the Appellant. He did not decide Issues 2, 3 or 4 on the Appellant's List. As regards issue 1 (the applicability of the rule in the Ladies Hosiery Case to Singapore, having regard to Article 8 of the Constitution) he expressed that it could not be applied to the facts of the present case, but said that he was not to be taken to mean that in no circumstances could the Ladies Hosiery Case be applied in Singapore. He accordingly allowed the appeal with costs, and certificate for two Counsel, and discharged the proposed increased assessment.

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Record p.55

Record p.59

Record p.61

23. The Respondent appealed to the Court of Appeal (Wee Chong Jin, C.J., Choor Singh, J., and D.C. D'Cotta, J.) who heard the appeal on 11th, 12th and 13th September 1978, and gave judgment on 20th November 1978. A Respondent's Notice was served. The Court referred to the Appellant's List of Issues. Dealing with Issue 4 on the Appellant's List, the Court held that the learned judge had wrongly found in favour of the Appellant on this issue, in that the Respondent's concession by his Counsel, Mr. James Chia, was merely a concession that the notice of transfer has "brought about" his action to amend the valuation list, and was not a concession that the amendment was made in consequence of the transfer rather than in consequence of sales or transfers of similar properties, within s.18 (7)(1)(a)(iii) of the Act. The Court held that it was clear that the Respondent had acted under s.18 because of the information derived from sales of similar properties. Accordingly the Court held the notice of amendment of the valuation list to be valid.

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24. At the hearing in the High Court the Appellant understood Mr. Chia's concession to be that the notice of amendment of the valuation list was made in consequence of the Appellant's notice of transfer and not in consequence of sales or transfers of

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similar properties. But the Appellant accepts that he cannot go behind the learned judge's note of the concession, and accordingly does not appeal against this part of the Judgment of the Court of Appeal.

10 25. As regards the other issues, Counsel for both Appellant and Respondent told the Court that only Issues 1 (Ladies Hosiery) and 5 (validity of the valuation list) would be argued, on the grounds that it would be preferable for the two issues of valuation (Issues 2 and 3) to be sent back if necessary, to a lower court. In particular, Counsel for the Appellant (Respondent in the Court of Appeal) told the Court that he was not presenting argument on Issues 2 and 3 unless the Court asked him to do so (which they did not). Counsel repeated this at the close of his submissions. The Appellant asked for the valuation issues to be sent back if necessary to the High Court; the Respondent asked for them to be sent back to the Valuation Review Board.

20 26. On Issue 5 (the validity of the valuation list) the Court held the list to be valid. On Issue 1, the Court held that the Ladies Hosiery Case does apply in Singapore, and that it is not ousted by Article 8 of the Constitution. The Appellant will refer to the reasoning of the Court on these two points in making his submissions, below.

30 27. The Court then went on to deal with Issue 3, the value of the property, notwithstanding that they had not heard submissions on this. The Court referred to the Appellant's evidence at the Valuation Review Board, to the Respondent's Report to the Valuation Review Board, to the comparable properties referred to in that Report, and in particular to the sale price of Lot 61-126, the land between Peck Hay Road and the appeal site. They said they had not been persuaded that the Valuation Review Board erred in principle or that there was no proper evidence on which the Board could properly have acted. They dismissed the appeal, with costs both in the High Court and Court of Appeal and restored the decision of the Valuation Review Board confirming the proposed assessment of \$26,000.

40 28. The Court's finding that "they had not been persuaded that the Valuation Review Board erred in principle or that there was no proper evidence on which the Board could properly have acted" was made

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notwithstanding that when Counsel for the Appellant (Respondent in the Court of Appeal) proposed in the course of his submissions to defend with argument and authorities the learned judge A.P. Rajah, J.'s criticisms of the Valuation Review Board he was stopped by the Court and told it was not necessary as the Court were not concerned with the point.

APPELLANT'S CONTENTIONS

29. The following are the Appellant's contentions on the four outstanding issues in the appeal. The Appellant will take Issues 1 and 5, the points of law, first, then Issues 2 and 3, the issues of valuation. 10

Issue 1 (Ladies' Hosiery Case)

30. The Appellant points out that the Ladies' Hosiery Case, which the Valuation Review Board relied on for its decision, is not binding authority in Singapore, and says that in any event the rule laid down in that case (that correctness should not be sacrificed to uniformity) does not apply in Singapore for two main reasons. 20

31. In the first place, there is in Singapore a constitutional provision (Article 8) that "All persons are equal before the law and entitled to the equal protection of the law". It is submitted that this requires, where necessary, the application of precisely the opposite of the Ladies Hosiery Rule, namely that equality and uniformity should take precedence over correctness. In practice this means that an assessment should be kept in line with the assessments of other comparable assessments even if this produces a value lower than the actual annual value. There is no equivalent provision in England. 30

32. It is of interest that Article 8 of the Constitution of Singapore is in similar terms to the 14th Amendment to the Constitution of the United States of America, "No State shall..... deny to any person within its jurisdiction the equal protection of the laws." In applying this Article of the Constitution, the Supreme Court of the United States has rejected the argument that correctness should not be sacrificed to uniformity, and has adopted "the principle that where it is impossible to secure both the standard of the 40

true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law": *Sioux City Bridge Company v. Dakota County, Nebraska* (1923) 260 U.S. 441.

10 33. In the second place, it was essential to the conclusion of the English Court of Appeal in the *Ladies Hosiery Case* that the ratepayer had a remedy against unequal assessment by making proposals to increase the assessments of other hereditaments. There is no such power for the taxpayer in Singapore.

34. In the High Court, A.P. Rajah, J., found that the *Ladies Hosiery Case* could be distinguished, and that it could not be applied to the instant case, though he added that he was not to be taken to mean that in no circumstances could it be applied in Singapore.

20 35. In the Court of Appeal, the Court rejected the Appellant's argument, and said:-

30 The law, as enacted by the Act, is that each property should be assessed independently and in accordance with the provisions in the Act. In our judgment, it would be contrary to common sense, if, complying with the provisions of the Act, the Chief Assessor arrives at a correct sum for a property, his assessment is struck down as contrary to Article 8(1) because other comparable properties have been incorrectly assessed by him. It would be patently absurd for a court to say to the Chief Assessor that although he had assessed a property in accordance with its correct annual value, he had acted unlawfully or ultra vires Article 8(1) because he should have, at the same time, corrected incorrect assessments of other comparable properties so that all comparable properties are thus uniformly assessed. In our opinion, the basic principle under the Act is that a property must be assessed independently and correctly i.e. in accordance with its annual value. Once this is done, it is immaterial that, as a consequence, other comparable properties are in fact assessed incorrectly. The remedy then would be for the Chief Assessor to correct, in accordance with the provisions of the Act, any incorrect assessments.

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36. The Appellant submits that the Court of Appeal have not dealt adequately with the constitutional point. The Appellant did not then and is not now saying that the Respondent would have acted unlawfully or ultra vires 'because he should have, at the same time, corrected incorrect assessments of other comparable properties'. The Appellant says that when the Respondent values a property pursuant to a proposal to amend the valuation list the Constitution requires him to take into account the assessments of comparable properties, and to ensure that the proposed assessment is fair and equal in comparison with them. If that is done in the present case the Appellant claims that the annual value will not exceed \$7,438 (see Issue 2). 10

37. The Court of Appeal have not referred to the Appellant's second reason for not applying the Ladies Hosiery Case, referred to in para. 30 above, notwithstanding that it was accepted by A.P. Rajah, J. 20

38. The Appellant will point out that even in England the rule in the Ladies Hosiery case has had a limited period of application. Throughout the most part of the history of rating in England the rule has been the opposite uniformity has been preferred to correctness. The history of this principle is dealt with in Ryde on Rating, 13th Edn, pp.466 to 473. Under the legislation in force before the Rating and Valuation Act, 1925, fairness and uniformity had been recognised by the courts as the overriding considerations in valuation; see e.g. Stirk & Sons Ltd. v. Halifax Assessment Committee (1922) 1 K.B. 264; Double v. Southampton Assessment Committee (1922) 2 K.B. 213. In the Local Government Act, 1966, Parliament enacted a statutory "tone of the list" provision, now found in s.20 of the General Rate Act, 1967, whereby during the currency of a valuation list no amendment can be made to increase the value of a hereditament above what it would have been at the time of preparation of the list, thus virtually eliminating the application of the rule in the Ladies Hosiery Case. 30 40

Issue 5 (Validity of Valuation List)

39. The Appellant's evidence on this issue is contained in the first affidavit of Mr. Ronald Chua, sworn the 5th January 1978, and the affidavit of Mr. 50

Tan Ah Bah, sworn the 5th January 1978. Both these deponents had served with the Property Tax Division of the Inland Revenue Department as valuers, Mr. Chua from 1965 to 1970, and Mr. Tan from 1978 to 1973. The gist of their evidence is contained in para. 6 of Mr. Chua's affidavit, namely that "the Valuation List was inevitably a pathwork of annual values fixed at different dates over a period of many years." He added that
10 some properties were not included in the List. As already stated (para. 14 above), the Valuation Review Board took judicial notice that this was correct, and did not require the Appellant to prove it.

40. The Respondent's evidence on this issue is contained in the affidavit of Mr. Lim Soo Chin, affirmed the 16th January 1978, who has served in the Property Tax Division since 1970, and is now Deputy Chief Valuer. Mr. Lim did not
20 dispute the Appellant's evidence that the list is a patchwork of annual values, and Counsel for the Respondent in opening his case to the Court of Appeal read Mr. Chua's affidavit and conceded "That was the practice, there is no dispute about it." (per Counsel's notes) Mr. Lim's evidence (para.4) that "The Valuation List is constantly kept up to date. Land reassessment is carried out district by district, and also as and when a Notice of Transfer for
30 a piece of land is received by the Department" is not inconsistent with Mr. Chua's evidence, or if it is should be rejected as merely an attempt to gloss over the true situation.

41. The Appellant submits that the test for the validity of a valuation list is that laid down by the Court of Appeal in England in Regina v. Paddington Valuation Officer ex parte Peachey Property Corporation Ltd (1966) 1 Q.B. 380.
40 Lord Denning, M.R. said, "The error must be one which affects the list as a whole, or a large part of it, and not merely particular hereditaments in it. It seems to me that if the valuation officer prepared the list on entirely the wrong basis, contrary to the directions in the statute, it could be quashed.... In short, there must be error which goes to the root of the list, or a large part of it."

42. The Appellant submits that the Property Tax
50 Act requires a Valuation List with up-to-date values, and including all properties. On the evidence, the Singapore 1973 Valuation List falls

short of the requirements of the statute in a fundamental respect, the error goes to the root of the list, which is therefore a nullity.

43. There is however one important respect in which the situation dealt with by the English Court of Appeal in the Peachey Case differs from that in Singapore, and that is in the consequences of quashing the list. In England, the valuation list lasts for a minimum of five years, which in the case of the 1963 Valuation List was extended to ten years. The consequences of quashing the list were therefore much canvassed in argument in the case, and are considered in the judgments of the Court. In Singapore where the valuation list only lasts for one year, the consequences of quashing the 1973 list will be negligible. Only the Appellant and any other taxpayers with outstanding appeals (it is unlikely that there are now any others) will benefit from a quashing of the list; those who have paid will have done so under a mistake of law and cannot seek to recover back taxes. It may be that if the 1973 valuation list is held to be invalid, other lists are likely also to be invalid, but it might well require separate legal proceedings to establish that, and once again those who have paid cannot recover. The one important consequence of a decision to quash the 1973 valuation list would be its stimulating effect on the Inland Revenue, who would have to produce an up-to-date and complete valuation list on the next occasion.

44. In the High Court, A.P.Rajah, J. did not find it necessary to determine this issue.

45. In the Court of Appeal, the Appellant's argument was rejected for the following four reasons :-

(1) The Court said that the Peachey Case was distinguishable. On that the Appellant will say that the Court was clearly wrong. The Court did not say what the test for invalidity would be in Singapore, if it was not the Peachey test.

(2) The Court said that the Appellant called no evidence to prove this ground before the Valuation Review Board. The Appellant has already explained why he did not do so (Supra para.16). The Court said that the evidence before the High Court was insufficient to establish invalidity.

The Appellant will submit that it is amply sufficient.

10 (3) The Court then referred to the Appellant's 'alternative contention', that the Property Tax Act itself contravenes Article 8 of the Constitution. However, the Appellant advanced no such argument. The Appellant was at pains to say that the Act itself required an up-to-date and complete valuation list and was therefore completely consistent with the Constitution. The Appellant complained not about the Act, but about the way it was being administered, which he said was not in accordance with the requirements of the Act. Appellant's reference to Article 8 of the Constitution was in connection with Issue 1 (Ladies Hosiery Case), and not Issue 5. The Court of Appeal has simply not understood the argument.

20 (4) The Court lastly referred to 'another contention' advanced by the Appellant, namely that the Respondent had discriminated against the Appellant, contrary to Article 8 of the Constitution. Again, the Appellant raised no such contention in connection with the validity of the valuation list. This argument was raised in connection with Issue 1 (Ladies Hosiery Case). As regards the point in the American Case of Sunday Lake Iron Co. v. Wakefield 247 U.S. 350, the Appellant will submit that the Court of Appeal was wrong, and that (if relevant) the 'patchwork' valuation list in the present case was an instance of 'intentional systematic undervaluation'.

30 Issues 2 and 3 (Values)

40 46. Issue 2 is the assessment of the property assuming that the Ladies Hosiery Case does not apply in Singapore. Issue 3 is the assessment of the property assuming that Case does apply in Singapore. In the former case the Appellant contends for an assessment of \$7,438; in the latter case, for an assessment of \$11,157.

50 47. As stated above (paragraph 25) neither party addressed the Court of Appeal on these issues, it being common ground that if the question of valuation arose it would be best determined by a lower court. The Court of Appeal appeared to agree with this attitude, and at no time asked for submissions on the issues of value. The Appellant submits that in those circumstances it was quite wrong and in breach of elementary natural justice for the Court to purport to determine the issue of value.

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48. Furthermore the Court of Appeal purported to determine the issue of value purely on the evidence before the Valuation Review Board. In that court the only evidence was that called by the Appellant. The appeal to the High Court is a rehearing and both parties presented evidence which was much fuller and more detailed than at the Valuation Review Board. The hearing in the Valuation Review Board lasted less than a day, while the hearing in the High Court lasted four days. At the Valuation Review Board only one witness, the Appellant's 10 valuer, was called but in the High Court the following witnesses were called:- for the Appellant, Mr. Ronald Chua, Valuer, Mr. Seah Kim Bee, town planning expert; for the Respondent, Mr. Lim Soo Chin, valuer, Mr. Jeffrey Heng, town planning expert, Mr. Poh Shoung Fook, public works engineer and Mr. Tan Ghee Paw, drainage engineer. A number of exhibits were put in evidence. Unlike the Valuation Review Board, the High Court judge viewed the site and some of the comparables. The Court of Appeal has ignored all the evidence in the High Court and 20 has summarily endorsed the finding of the Valuation Review Board. The Appellant is deeply aggrieved by the injustice thus inflicted on him.

49. The Appellant submits, as he submitted to the Court of Appeal, that if an issue of valuation arises it should be sent back to the High Court judge for determination. The High Court heard the full evidence of both parties, including 30 cross-examination, viewed the site and heard the submissions of the parties on value. The High Court is thus fully equipped to determine the proper assessment of the land, in accordance with the opinion of the Judicial Committee of matters of law and principle.

50. In the Court of Appeal the Respondent submitted that any issue of value should be sent back to the High Court but to the Valuation Review Board. The Appellant submits that if there is power to 40 send the case back to the Valuation Review Board (which the Appellant queries) that course should not be adopted, because (a) the Valuation Review Board is less well equipped to determine the issue than the High Court and (b) there would in any event still be an appeal to the High Court from their determination. It is in the best interests of justice, and would save costs, for the assessment to be determined, if necessary, by the High Court.

51. In the event, however, that the Judicial 50 Committee wishes to determine any issue of value itself, the Appellant will be ready to make

submissions on that issue at the hearing of the appeal.

52. In the event, therefore, that issues of valuation arise, the Appellant submits that the case should be remitted to the Court of Appeal in Singapore with a direction to send it back to the High Court for a finding on value.

53. The Appellant draws attention to the following errors in the Record of Proceedings :-

- 10 p.30 line 13 - for 'two' read 'ten'
 p.35 line 13 - ditto
 p.16 line 14 - for '74,875' read '14,875'
 p.16 line 15 - for 'assess' read 'access'

54. In the premises THE APPELLANT respectfully SUBMITS THAT THE APPEAL SHOULD BE ALLOWED FOR THE FOLLOWING AMONG OTHER

R E A S O N S

- 20 (1) BECAUSE the Court of Appeal of Singapore erred in law in holding that the rule in the Ladies Hosiery Case, that correctness must not be sacrificed to uniformity, applied in Singapore. (1932) 2KB 679
- (2) BECAUSE the Court of Appeal of Singapore erred in law in holding that the test for validity of a valuation list laid down in the Peachey Property Case did not apply in Singapore. (1966) 1QB 380
- (3) BECAUSE the Court of Appeal of Singapore erred in holding that the evidence before the High Court was insufficient to establish the invalidity of the valuation list.
- 30 (4) BECAUSE the finding of the Court of Appeal of Singapore on value is invalid and of no effect, having been arrived at in breach of the rule of natural justice 'audi alteram partem'.
- (5) BECAUSE (in the alternative to (4)) the finding of the Court of Appeal of Singapore on value was wrong and contrary to the evidence.

DAVID WIDDICOMBE

P. SELVADURAI

No.11 of 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

B E T W E E N:-

HOWE YOON CHONG

Appellant

- and -

THE CHIEF ASSESSOR, PROPERTY TAX,
SINGAPORE

Respondent

CASE FOR THE APPELLANT

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