COMPULSORY ACQUISITION OF LAND IN SINGAPORE

A Fair Regime?

This article outlines the legislative history of the Land Acquisition Act (Cap 152, 1985 Rev Ed) and the philosophy behind the legislation. The main thrust of the article is its analysis of the circumstances leading to the amendments to the Land Acquisition Act. In so doing, it also examines the development of the compensation framework and its implications for landowners. A number of landmark cases on interesting issues have also been referred to and these serve to illustrate the changing paradigms of the State and the landowners with the passage of the laws on compulsory acquisition.

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> "I am the basis of all wealth, the heritage of the wise, the thrifty and prudent.
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> I am the poor person's joy and comfort, the rich person's prize, the right hand of capital, the silent partner of thousands of successful people.

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* Opinions and points of view expressed in this article are those of the authors and do not necessarily reflect the official position or policies of the Singapore Government.

> I am solace of the widow, the comfort of old age, the cornerstone of security against misfortune and want. I am handed down through generations, as a possession of great value.
>
> I am the choicest fruit of labor, the safest collateral and yet I am humble. I stand before every person bidding them to know me for what I am and asking them to possess me.
>
> I have not been produced for millions of years yet, I am so common that thousands, unthinking and unknowingly, pass me by."[1]

I. Introduction

1 Land is a scarce commodity with limited supply. It is therefore a very precious possession and ownership rights are sacrosanct. Notwithstanding this, there will be a need from time to time to acquire land from private individuals to achieve a wider public good. Hence every State which aspires to a higher level of land development has some form of expropriation laws to achieve national objectives. Singapore is no different and the powers for compulsory acquisition of private land are set out in the Land Acquisition Act (Cap 152, 1985 Rev Ed).

2 Singapore's Land Acquisition Act, with its comprehensive powers and compensation framework, has played a pivotal role in transforming our urban landscape and has enabled the State to develop important infrastructure for social and economic purposes. This has propelled our standing at the international level. According to the 2009 study on the annual Quality of Living Survey by Mercer Human Resource Consulting,[2] Singapore was placed at the 26th position, leading all Asian cities with Tokyo being the next highest ranking Asian city at the 35th position.[3] We have also surpassed many other Western cities. The study took into account 39 key quality-of-life factors among which are standards of infrastructure, and provision of public transport and housing. Singapore's status today as a first world nation is due in part to the bold steps which the State had taken to acquire land for public purposes in the past.

3 Historically, the philosophy underlying the Land Acquisition Act has been to secure private land for public good without undue financial burden to the State. This has remained largely unchanged over the years. Nevertheless, land acquisition is seldom a happy affair and individuals whose properties are acquired do suffer pecuniary loss of

1 Anonymous.

2 The study aims to provide advice to governments and multinational companies deciding deployment destinations for employees.

3 Liew Aiqing, "Vienna tops in living quality, S'pore improves ranking", *The Business Times* (29 April 2009).

some sort. Hence incremental changes were made to the legislation over time and administrative measures were introduced to ameliorate hardship. What had prompted these changes? Is the land acquisition regime in Singapore fair?

4 In the context of land acquisition, fairness has to be examined both from the landowner's and the State's perspective. Perception of fairness also changes over time with changing expectations. What may be perceived as unreasonable today may have been accepted as reasonable given the constraints faced in the days of yesteryear. This article examines the changes in the land acquisition regime over the years and examines the notion of fairness in relation to the Land Acquisition Act.

II. History of the Land Acquisition Act

5 Singapore's compulsory acquisition powers can be traced back to 1857 with the passing of the Indian Act VI by the Legislative Council of India. The territorial scope of the Act was applicable to the Straits Settlements as well as the regions governed by the East India Company. Land when alienated had a condition inserted in the Crown grant or lease which stipulated that the land could be resumed whenever it was required for public works such as roads, canal and railways. The 1857 Act was drafted with no provision governing the compensation quantum and was also silent on how the land value was to be determined.[4] Landowners' right to compensation for the land acquired were uncertain then.

6 In 1870, the Indian Act was updated to incorporate several factors which had to be considered in determining the amount of compensation payable. These factors formed the basis for compensation for the enactment of the Straits Settlement Ordinance No VI in 1890 which replaced the 1857 Indian Act. In its preamble, it was stated that its purpose was to "consolidate and amend the law for the acquisition of land needed for public purposes and for determining the amount of compensation to be made on account of such acquisition".[5]

7 Over time, the original provisions were found to be inadequate. The statute from time to time was amended to provide for powers to acquire for specific public purposes. In 1955,[6] an ordinance was passed to enable the Government to acquire land for new towns and

4 *Ng Boo Tan v Collector of Land Revenue* [2002] 4 SLR 495 at [17].
5 *Ng Boo Tan v Collector of Land Revenue* [2002] 4 SLR 495 at [18].
6 Land Acquisition Ordinance (Cap 248, 1955 Rev Ed), as amended by Land Acquisition (Amendment) Ordinance, 1964 (No 1 of 1964).

Improvement Trust Flats to be built. The quantum of compensation for acquired properties was for the first time pegged at the value of the properties as at a statutory date, *ie* 22 April 1955.

8 When Singapore became a self-governing state in 1959, the 1955 Ordinance was amended to reflect her new-found independent status.[7] A redraft of the Land Acquisition Act was felt desirable in view of the increased pace of public development and the need to acquire land for a myriad of public purposes, including residential development, industrial development and urban renewal of the city area.[8] Detailed studies were carried out and upon recommendations by a Select Committee, the 1959 Land Ordinance was repealed and replaced by the Land Acquisition Act in 1966.[9] The focus at that time was to develop public infrastructure quickly to meet public needs. However, the planned public development projects were of massive scale and placed a heavy financial burden on the shoulders of an infant developing country.

9 During the Parliamentary debates on the Land Acquisition Bill[10] on 22 June 1966, the late Mr E W Barker, then Minister for Law, said:

> [T]his Bill embodies (in the form of a revised consolidated Act) both the provisions in the existing law, that is to say, the Land Acquisition Ordinance, Chapter 248, as well as the provisions in the Land Acquisition (Amendment No 2) Bill. The major departures from existing legislation are:-
>
> > (1) The assessment of compensation provisions have been re-drafted on the basis of two principles enunciated by the Prime Minister in December 1963. Firstly, that no landowner should benefit from development which has taken place at public expense and, secondly, that the price paid on acquisition of land for public purposes should not be higher than what the land would have been worth had the Government not carried out development generally in the area …

10 This pronouncement sets out the general operating principles of the Land Acquisition Act and reflected the philosophy that the appreciation in land value which resulted, *inter alia*, from good land planning and infrastructure development by the Government ought to

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7 N Khublall, *Compulsory Land Acquisition – Singapore and Malaysia* (Butterworths, 2nd Ed, 1994) at pp 9–10.

8 *Singapore Parliamentary Debates, Official Report* (10 June 1964) vol 23 at col 26 (Lee Kuan Yew, Prime Minister).

9 *Singapore Parliamentary Debates, Official Report* (26 October 1966) vol 25 at col 406 (E W Barker, Minister for Law and National Development).

10 *Singapore Parliamentary Debates, Official Report* (22 June 1966) vol 25 at col 133 (E W Barker, Minister for Law and National Development).

accrue to the infrastructure provider, *ie* Government, and not to individual landowners. The Government may in turn re-distribute the wealth gained from the appreciation in land value to the population through infrastructure and other public developments. Under this policy, the compensation framework ensured that land can be acquired by providing that the compensation should be based on the value of the land as at the date of gazette or a statutory date, *whichever was lower*.

11 The 1966 Land Acquisition Act and its amendments were consolidated in 1970.[11] It was amended in 1973, which resulted in a number of major amendments geared more towards the wider public interest as opposed to individual landowner's interest. Between 1986 and 1995, three amendments were made to the statutory date of compensation to reflect the increase in property prices over time. The Government's approach was however a cautious one, preferring to supplement the statutory compensation through *ex gratia* payments in appropriate cases. In 2007, radical changes were finally made to the Land Acquisition Act and a few sacred cows were slaughtered, the most prominent of which was to abolish the statutory date of compensation.

III. The land acquisition regime

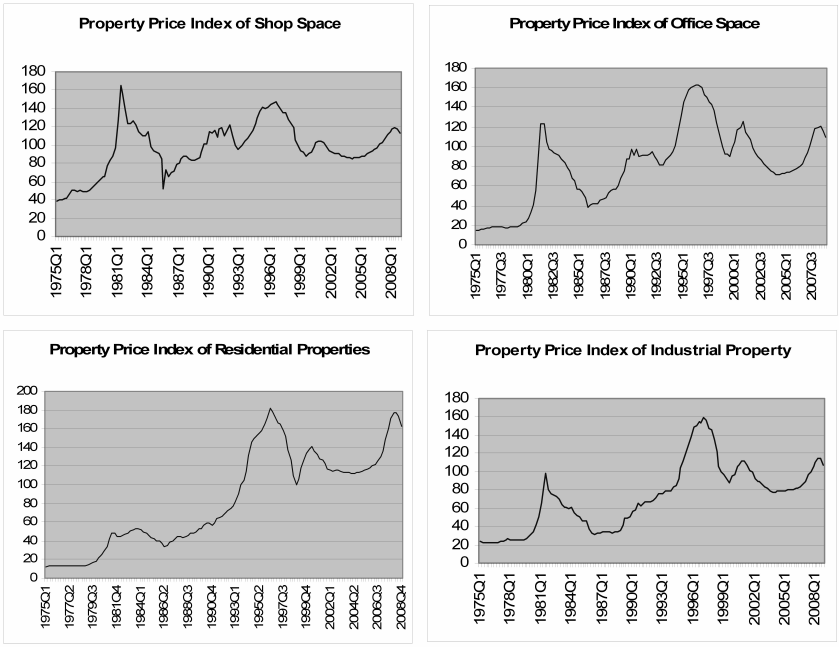
A. The statutory date mechanism and market value

12 Prior to 2007, the land acquisition legislation stipulated that compensation for acquired land was based on either the value of the land as at the date of gazette or a historical statutory date, *whichever was the lower*. This framework of compensation underscored the wider public interest to cap the costs of public development and infrastructure.

13 The financial impact on property owners was tremendous when the statutory date was used to determine compensation. Chart 1 shows the property price indices for various key real estate sectors in Singapore over the period from 1975 to 2008.

11 N Khublall, *Compulsory Land Acquisition – Singapore and Malaysia* (Butterworths, 2nd Ed, 1994) at p 11.

Chart 1: Property Price Indices of Singapore Real Estate Market



Source: URA Realis

14 From the mid 1970s to the 1980s, the value of real estate had risen considerably. Property prices followed a cyclical pattern and trended upwards over the long term. By the 1980s, the statutory date pegged at 1973 property values was totally inequitable. The 1973 statutory date meant that landowners whose land had been acquired in the 1980s were paid based on values a decade earlier and hence suffered substantial financial losses. The Government carried out the first of several revisions to the statutory dates in 1988 to bring compensation in line with market value as at 1 January 1986 for properties acquired after 30 November 1987. This was further reviewed on 26 February 1993 and 1 November 1995.

15 The various statutory dates adopted by the State in the last 36 years were as follows:

(a) 30 November 1973 for acquisitions before 30 November 1987;[12]

(b) 01 January 1986 for acquisitions on or after 30 November 1987 but before 18 January 1993;[13]

12 *Singapore Parliamentary Debates, Official Report* (18 December 1973) vol 32 at cols 1392–1396 (E W Barker, Minister for Law and National Development).

13 *Singapore Parliamentary Debates, Official Report* (12 January 1988) vol 50 at col 348 (E W Barker, Minister for Law).

(c) 01 January 1992 for acquisitions on or after 18 January 1993 but before 27 September 1995;[14] and

(d) 01 Jan 1995 for acquisitions on or after 27 September 1995.[15]

16 The interval between the revision in 1973 and 1986 was 13 years. The interval between the review in 1986 and 1992 was a shorter period of six years. The 1992 and 1995 reviews were only three years apart. This showed the change over time to compensate at a value closer to the value at the date of gazette. In fact, in the 1993 Second Reading of the Land Acquisition (Amendment) Bill,[16] the then Minister for Law, Prof S Jayakumar pointed out that the update of the statutory date had occurred at a shorter interval compared to the previous updates and regular updating of the statutory dates in the future could be considered.

17 Interestingly also, when the 1986 Act was amended, it was after a number of major acquisitions had been gazetted, as large tracts of lands were needed for infrastructure development such as the construction of the mass rapid transit system, drainage improvement, road widening and urban redevelopment in various parts of Singapore. The cost of acquisition in the early years of nation building could have been a major concern. Land ownership then was mainly in the hands of a few individual owners. Clearly the compensation regime in the early years was structured in favour of the tax-paying public, who had to bear the cost of public development rather than a small group of individual landowners. Although this was obviously unfair from the landowners' point of view, it was nevertheless reasonable from the State's perspective. Where the acquisition affected the wider population however, the State was prepared to be more accommodating. In contrast to the long awaited 1986 amendment, the 1995 amendment came just three years after the 1992 amendment. It was followed two weeks later by the acquisition of 17.5ha of land at Woodlands Road owned by City Developments Ltd, Centrepoint Properties and First Capital Corporation.[17] These were public-listed companies and the properties had been transacted at market value prior to the gazette in 1993, 1994 and 1995 respectively. Had the legislation not been amended, the man in

14 *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at col 530 (Prof S Jayakumar, Minister for Law).

15 *Singapore Parliamentary Debates, Official Report* (01 November 1995) vol 65 at col 34 (Prof S Jayakumar, Minister for Law).

16 *Singapore Parliamentary Debates, Official Report* (26 February 1993) vol 60 at col 536 (Prof S Jayakumar, Minister for Law).

17 Tan Kim Song, "Wafer fabrication park in Woodlands to get more land", *The Straits Times* (14 October 1995).

the street who had invested in these companies would have been adversely affected.

18 No changes were made to the Land Acquisition Act between 1995 and 2007 as property prices had fallen substantially after the 1997 Asian financial crisis and the 2003 Severe Acute Respiratory Syndrome ("SARS") health scare. Generally, property prices were below the 1995 statutory date prices. Owners whose lands were acquired during this period were paid the current market value for their land as at the date of gazette.[18]

19 The year 2007 marked a milestone in the history of land acquisition legislation in Singapore.[19] A radical step was taken to abolish the statutory date of compensation. With effect from 12 February 2007, compensation was based on the market value which a willing purchaser would pay for the land as at the date of gazette.

20 The departure from fundamental principles was clearly set out in the Second Reading of the Land Acquisition (Amendment) Bill.[20] Prof S Jayakumar, the then Deputy Prime Minister and Minister for Law had said:

> Singapore today has become more developed and urbanised. Land acquisitions now affect far more people than those carried out in the 1970s or 1980s. Today, many more Singaporeans own private properties. It is often that Singaporeans sink a major portion of their life savings and future earnings into their property.
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> … Over the years, we have sought to cushion the impact of this approach by periodically updating the statutory date and also through ex gratia payments. However, after reviewing the Act, we have decided that these provisions are no longer appropriate in the current context. We are therefore amending the Act to provide for compensation at the prevailing market value.

21 The Government recognised that acquisitions, especially for road and rail development in a highly urbanised city, affected the man in the street and eventually this led to the 2007 amendments. In 2007, the land acquisition regime had taken a quantum step towards a fairer scheme for compensating landowners based on current market value.

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18 *Singapore Parliamentary Debates, Official Report* (15 August 2003) vol 76 at col 2459 (Assoc Prof Ho Peng Kee, Senior Minister of State for Law).

19 *Singapore Parliamentary Debates, Official Report* (11 April 2007) vol 83 at col 500 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law).

20 *Singapore Parliamentary Debates, Official Report* (11 April 2007) vol 83 at col 500 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law).

B. Recognising potential for development of land

22 Prior to 2007, the market value of the acquired land was deemed not to exceed the price which a *bona fide* purchaser might reasonably be expected to pay based on its existing use or its anticipated continued use as designated in the Development Baseline[21] *whichever was lower*. Zoning, density requirements and other restrictions under the Planning Act including restrictive covenants (if any) in the title of the acquired land were taken into account in determining market value. No account was to be taken of any potential value of the land for any other more intensive use.[22] For example, if the existing use was for a warehouse and the baseline was for residential use, compensation was based on the lower valued use, *ie* as a warehouse. This approach was in line with the acquisition philosophy that the appreciation in land value which resulted from government action such as upzoning ought not to accrue to individual landowners who had no part to play in the appreciation in the land value. However, this policy had attracted its fair share of criticism as it may be reasonable to expect a purchaser to pay more for the land based on its more intensive use. Another criticism was that s 33(5)(*e*) of the Land Acquisition Act was very technical and difficult to comprehend and had to be read in conjunction with the Planning Act. In the 2005 Budget debate, Ms Indranee Rajah, Member of Parliament, had asked the Minister for Law:

> … [W]hether the Minister would consider redrafting section 33(5)(e) of the Land Acquisition Act. … The problem is when you refer to section 36 of the Planning Act it does not talk about a purpose. It talks about the development baseline which is a value. So, the two do not match and it does not actually make sense in plain English. In fact, I would strongly recommend that anybody who wants an instant migraine should try reading the two sections of the different Acts together. You can in a very roundabout way figure out what it means, but it is an extremely convoluted way of doing it …[23]

23 Section 33(5)(*e*) of the Land Acquisition Act was eventually redrafted in 2007 and went beyond the Member of Parliament's expectation as it removed the "whichever is lower" concept such that the use as permitted under the Master Plan is now recognised. Compensation is now based on the open market value which a *bona fide* purchaser would reasonably pay for the land taking into account the permitted use that is realisable under the Master Plan as at the date of acquisition. In other words, it is based on how land would be valued if it

21 Planning Act (Cap 232, 1998 Rev Ed) s 36.
22 Planning Act (Cap 232, 1998 Rev Ed) s 36.
23 *Singapore Parliamentary Debates, Official Report* (03 March 2005) vol 79 at col 1314 (Indranee Rajah, Member of Parliament, Tanjong Pagar GRC).

were to be sold in the open market.[24] This is however subject to zoning, density requirements, restrictive covenants in the title and any other restrictions imposed by or under the Planning Act. With the amendment, reading of s 33(5)(*e*) was made clearer.

C. Repeal of obsolete provisions

24 Several obsolete provisions relating to the "fire site", the "burial ground", the "2-year-rule" and "7-year-rule" which limited the payment of compensation were also repealed in 2007.[25] The "fire site" provision was a peculiar feature in the old legislation. It originated from the acquisition of some 24.3ha of private land at Bukit Ho Swee which was gutted by fire in 1961.[26] It stipulated a formula to cap compensation at one-third the value of the property where it was needed for a public purpose and it was an encumbered land acquired within six months of it being devastated by disasters such as fire, storm or any other acts of God. Clearly, it did not seem fair for such a provision to be part of the law as owners were already adversely affected by a disaster. Why was there then a need for a lower compensation when the land was acquired, thus dealing the landowner a "double whammy"? This was again in line with the approach that individual landowners should not benefit from increases in the value of their land which were not of their own doing. The basic premise was that owners stood to gain in respect of land cleared by acts of God, the market value of land free of encumbrances being higher than the value of land encumbered with squatters and tenants. There was a genuine concern that the potential profit would induce landowners to commit arson who were unable to clear their squattered land due to the protection under the Rent Control Ordinance. Further, a substantial amount of public monies would have been expended to help the fire victims to find alternative homes and rehabilitate. With the repeal of the Rent Control Act in 2001, private owners could easily clear sites for redevelopment and today there are hardly any squatter lands. Hence, after 46 years, the fire site provision was finally repealed.

25 The burial ground provision was repealed as all private cemeteries had been issued with closure orders and ceased to be used as burial grounds. The "2-year-rule" disregarded the increase in the value of land from improvements to property made by the owner in contemplation of acquisition within the two years preceding the acquisition. The "7-year-rule" disregarded any increase in value

24 *Singapore Parliamentary Debates, Official Report* (11 April 2007) vol 83 at col 500 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law).

25 *Singapore Parliamentary Debates, Official Report* (11 April 2007) vol 83 at col 500 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law).

26 "Aid for fire victims", *The Straits Times* (27 May 1961).

attributed to infrastructural works in the neighbourhood within the seven years preceding the date of gazette. In any event, the State ceased to take into account the depressant effects of these two rules in determining compensation as it was not possible to isolate and quantify each and every factor that may be attributed to non *bona fide* improvement works or enhancement factors attributable to infrastructure works.

D. Ex gratia *payment*

26 In the 1980s, compensation to landowners in a rising property market was substantially lower than market value. Owners whose properties were acquired and paid 1973 values suffered great hardship as the compensation was clearly inadequate. In 1982, *ex gratia* payments were introduced to top up the difference between the statutory compensation and the market value of the acquired property. Only owner-occupiers of residential properties were eligible, provided they did not own any other property. In addition, the *ex gratia* payment was made only if the statutory compensation was less than $600,000.[27] The intention was clearly to help only owners of small residential properties whose compensation was insufficient to purchase a replacement home and who were therefore left without a roof over their heads.

27 The criterion for the *ex gratia* payment was progressively but cautiously widened in response to changing circumstances. In 1996, *ex gratia* payment was extended to owners of shop houses operating from the acquired premises. Owners of multiple properties were also eligible provided the acquired property was owner-occupied. This change in 1996 coincided with the acquisition of over 700 properties affected by the North East Line of the Mass Rapid Transit ("MRT") system and comprehensive redevelopment. Many of these properties were "mum and pop shops" and small businesses. In 2001, the *ex gratia* scheme was extended to all types of properties. The cap on the *ex gratia* amount was also gradually increased over the years. From 1998 however, the concept of topping up the statutory compensation from the statutory date of 1995 to the date of gazette has been academic as property prices were below 1995 values. Today, there is no necessity to top up the difference between the market value and the lower compensation based on a statutory date since compensation is now based on market value as at the date of gazette.

28 There had been instances when an *ex gratia* payment was made even where compensation was at market value. Since 1998, the *ex gratia*

27 *Singapore Parliamentary Debates, Official Report* (17 March 1983) vol 42 at col 1113 (E W Barker, Minister for Law). This was on the premise that the amount was the average price of a semi-detached house.

scheme recognises social consequences when people are uprooted from their homes or place of business. The payment was made on a case-by-case basis to owners who suffered severe hardship. The factors taken into account included the purchase price, owner occupation and whether owners were elderly and sick persons who needed help.

29 A factor of particular concern was the possibility of outstanding mortgage bank loans secured by landowners to finance their purchases or their businesses. If the property value falls below the outstanding mortgage, it leads to a situation known as negative equity. In instances, where the acquired property's value was significantly below the outstanding mortgage, landowners may suffer severe financial hardship due to the acquisition. The State has always maintained that it does not time the market to take advantage of any property troughs. Acquisition is based on when the property is needed for infrastructure development. The fact remains that such developments generally occur during an economic slowdown when public projects are often introduced to pump-prime the economy. The compulsory act of taking the land has forced the owners to give up their properties at a timing not of their choice and they do not have the option of rearranging their financial plans to meet their cash flow. The *ex gratia* scheme is therefore intended to give some assistance to alleviate hardship.

30 One of the criticisms was that the *ex gratia* payment was "pity money" and lacked transparency as it was given on a case-by-case basis and was not subject to appeal in court. Another criticism was that differing amounts were paid for similar properties within the same street block because the quantum of *ex gratia* payment was based on the financial and personal circumstances of the owner rather than the value of the property. Few would object to the scheme as any quantum in addition to the statutory compensation was always welcomed. However, this discretion to pay must be judiciously exercised by the Government. Otherwise, the cost of public projects will inevitably increase and the basis for payment as set out in the legislation may be circumvented.

E. Removal and relocation expenses

31 In determining the amount of compensation, account is taken of the "reasonable expenses" incurred by the landowner who is compelled to change his residence or place of business. Previously, compensation under this head of claim was conservative and confined mainly to the actual cost of shifting to new premises. In 2001, the Government announced that it would also pay for the stamp fees and legal fees incurred in the purchase of a comparable replacement property. However, removal expenses may not be awarded if, at the date of acquisition, there was evidence to show that the owner had not

changed his place of business, was not able to carry on the business or was unlikely to resume his business subsequent to the acquisition.[28]

F. Compensation to tenants

32 The Land Acquisition Act[29] only recognises claims made by any person claiming an interest in the compensation to be made on account of the acquisition of land. This excludes a monthly tenant or a tenant at will. Sometimes, when properties are acquired there may be existing tenants on site. For such tenants, the practice until recently has been for the Government to deal with landowners on the basis that they will hand over vacant possession of the land. Discretion was left to the landowner and his tenant(s) to arrive at a mutually accepted arrangement in respect of the termination of the tenancy. So far, parties have generally found this arrangement to be beneficial rather than for tenants to make a claim directly to the Government especially when the tenancies are short ones and agreement can be reached within a short time. In the case of a short-term tenancy where compensation is not significant, it obviated the need to spend time and resources in filing separate claims. This also avoided the complexities involved in apportioning the compensation amongst tenancies with different termination dates. One example was the acquisition of Colombo Court in 1998 to house the new Supreme Court. There were many tenants with two- or three-year tenancy terms. Had the State carried out an apportionment, there would have been numerous disputes on apportionment and this could have delayed the payout and the handover of the site.

33 Where the unexpired term of the tenancy is significant or a tenant has contributed substantially to improving the property, it may be useful for the tenants to file separate claims with the Government to safeguard their interest. This is especially so if negotiation with the landlord is unlikely to achieve a satisfactory outcome. In the recent case involving the Oasis Restaurant[30] separate claims were filed with the Government. There were four tenants occupying the site on relatively long-term tenancies of five to nine years and who had invested substantial amounts in renovating the tenanted premises. Separate claims were submitted and an apportionment of the compensation was carried out. Both the landlord and the tenant had steered away from the general practice of seeking to resolve the issue of compensation amicably with each other.

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28 *Stage Development Pte Ltd v The Collector of Land Revenue* [2001] SGAB 11.

29 Land Acquisition Act (Cap 152, 1985 Rev Ed) s 2.

30 *Oasis Holdings Private Limited v Collector of Land Revenue* [2009] SGAB 2.

34 In many acquisitions, it is noted that very few tenancy agreements stipulate the rights and obligations of the landlord and tenant in the event that the tenancy contract is frustrated by the Government's compulsory acquisition. It may be useful to make such provision if the tenants intend to make substantial investments in the property.

G. Appeals

35 Under the Land Acquisition Act, a person who is dissatisfied with the statutory compensation awarded to him may appeal to the Appeals Board (Land Acquisition). The Appeals Board (Land Acquisition) is a quasi-judicial tribunal established under the Land Acquisition Act to hear appeals. It consists of a Commissioner of Appeals, who is currently a retired Judicial Commissioner, either sitting alone or with two assessors. The Commissioner enjoys the same judicial immunity conferred on a Supreme Court judge. This ensures the independence of his decisions. The assessors are drawn from a panel made up of eminent professionals in private practice in related fields such as valuation, architecture, quantity surveying and engineering.

36 When private land is acquired, landowners expect to be paid what they perceive to be the fair market value for their property. Generally, affected landowners' claims tend to be substantially higher than the compensation awarded. In some cases, the claims were two to three times higher than the statutory compensation.

37 In the case of *Ng Poh Guan v Collector of Land Revenue*[31] the owner claimed an amount of $688,000 against the statutory compensation of $275,000 for a unit in Hock Kee House. Properties within the same building block of similar size had been transacted at the range of $250,000 to $300,000 a year before the acquisition. The Appeals Board eventually increased the compensation by $20,000 to $295,000. In another case, *Oasis Holdings Private Limited v Collector of Land Revenue*,[32] the owner appealed against the statutory compensation of $41,700,000 and claimed for $75,000,000. The Appeals Board agreed with the statutory compensation. There were also instances where the Appeals Board agreed with the owner's claims. In the case of *Koh Tat Wan Pte Ltd v The Collector of Land Revenue*,[33] the company had appealed against the statutory compensation of $2,800,000 for its two-storey warehouse sitting on land situated at Irving Place, off Upper Paya Lebar Road and claimed the amount of $4,300,000. The Appeals Board agreed with the owner and awarded the amount which

31 [2004] SGAB 3.
32 [2009] SGAB 2.
33 [2003] SGAB 8.

the owner had claimed. The appeal process is therefore a robust mechanism where owners who have a case will get their just due.

38 The Government decided in 2001 to encourage owners to seek professional valuation advice and to reimburse owners a reasonable amount for the first submission of claims. Steps were also taken to outsource the Government's valuation for determining the compensation award to the private sector.

39 Valuation is not an exact science and factors such as recent sales transactions for the property, other comparable sales transactions, adjustments for condition, size, location, tenure and time difference between transactions are considerations which can influence the valuation. Hence there will always be differences between claims and awards.

IV. Landmark cases

40 Over the years, a number of controversial cases have attracted public attention either through press reports, Parliamentary debates or appeals to the Appeals Board (Land Acquisition) and the Court of Appeal.

A. $1 compensation

41 In 2003, headlines like "$1 – That's how much land big enough for 17 carparks is worth",[34] "Price of 200sq m of freehold land: $1"[35] and "Land acquisition: why the 'paltry' payouts"[36] splashed across local newspapers. The controversy was over the acquisition of a piece of land occupied by some 17 car park lots of the Chuan Park condominium located off Lorong Chuan required for the Circle Line MRT station, and another piece of land at Kim Keat Road occupied by seven car park lots of the Faith Assembly of God Church needed for road widening. The $1 compensation for both sites attracted attention from the public who could not understand the basis of the award. Was it fair to take away someone's land and compensate at $1?

34 Arlina Arshad & Wendy Tan, "$1 – That's how much land big enough for 17 carparks is worth", *The Straits Times* (18 June 2003).

35 Wendy Tan, "Price of 200sq m of freehold land: $1", *The Straits Times* (26 June 2003).

36 Kalpana Rashiwala, "Land acquisition: why the 'paltry' payouts", *The Business Times* (21 June 2003).

42 In the church case, at the time of acquisition,[37] the strip of about 200sq m of land was zoned for road use in the 1998 Master Plan. Hence a nominal compensation was awarded. It was clarified in Parliament that the rezoning was meant to reflect the planning intent for the area. It was not the intention to change the compensation approach for land that was designated as roads through a change in zoning under the Master Plan. The rezoning resulted in an unintentional impact on the valuation of the acquired land. To correct the unintended consequence, the church was given an *ex gratia* payment of $64,000.

43 In the case of Chuan Park condominium off Lorong Chuan, some 220sq m of land (about 0.6% of the entire development) was acquired for construction of the Circle Line MRT station. The new station was situated about 50m away from the condominium. Government valuers had advised that the value of Chuan Park would be enhanced by about $18m as a result of its close proximity to the new train station.[38] The assessment was supported by news reports of property analysts and consultants who said that "private property near MRT stations typically commands a 5 to 10 per cent premium" as a result of the improved convenience.[39] This triggered off the betterment rule under s 33(1)(*b*) of the Land Acquisition Act. The section provided that the compensation for land must take into account any increase in the value of any other land, of the person interested, that is likely to accrue from the use to which the acquired land will be put. The expected benefits generated and cost of the land were therefore assessed on the basis of established valuation principles. The owners filed an appeal against the award but this was subsequently withdrawn.

44 The award of nominal compensation for land is not new. As far back as 1996 it was clarified in Parliament that, as a general rule, the Government does not acquire land for $1. However, when land has been set aside for public purposes as part of planning approval for development or is an odd piece which cannot be developed on its own and has been designated for road or drainage reserves, the compensation for such land would be nominal. This is also the case where the land has been leased by the owner for long tenure (for example, 999 years)[40] as his reversionary interest would be nominal.

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37 *Singapore Parliamentary Debates, Official Report* (15 August 2003) vol 76 at cols 2459–2461 (Assoc Prof Ho Peng Kee, Senior Minister of State for Law).

38 *Singapore Parliamentary Debates, Official Report* (15 August 2003) vol 76 at col 2462 (Assoc Prof Ho Peng Kee, Senior Minister of State for Law).

39 Arlina Arshad & Wendy Tan, "$1 – That's how much land big enough for 17 carparks is worth", *The Straits Times* (18 June 2003).

40 *Singapore Parliamentary Debates, Official Report* (07 November 1996) vol 66 at col 862 (Assoc Prof Ho Peng Kee, Senior Parliamentary Secretary to the Minister for Law).

B. Pointe Gourde *principle in reverse*

45 In *Ng Boo Tan v Collector of Land Revenue*,[41] the Court of Appeal considered an important aspect of valuing land that is to be acquired. The property in question was a flat unit within an apartment block known as Elling Court situated at Upper Paya Lebar Road which was acquired in 1998 for the extension of Bartley Road to Tampines Avenue 10. Road widening lines had progressively affected the whole of Elling Court prior to the acquisition. The owner/appellant argued that the depreciation of the market value of her property caused by the road widening scheme should be excluded in determining the compensation. The owner contended that the reverse of the common law principle established in *Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands*[42] should be applied in her case to exclude the diminution in market value of Elling Court caused by the road scheme. The *Pointe Gourde* case held that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition ("the *Pointe Gourde* principle").

46 In a majority decision, the Court of Appeal held that the legislative framework for compensation and the language and structure of the Land Acquisition Act were inconsistent with the *Pointe Gourde* principle. The then Chief Justice Yong Pung How relied on two provisions in the Land Acquisition Act, namely ss 33(1)(*b*) and 33(5)(*e*). Yong CJ held that s 33(1)(*b*) provided that the increase in value of any other land of the person interested would be taken into account to reduce the compensation payable, hence reversing one aspect of the *Pointe Gourde* principle enunciated in *South Eastern Rly Co v London County Council*[43] (which held that the effect of a scheme on an adjoining property is to be ignored for purposes of computing compensation).

47 The second conflict was found under s 33(5)(*e*) which stipulated that zoning, including any rezoning, done prior to the acquisition was to be taken into account when determining the market value of the acquired land, whereas the *Pointe Gourde* principle in reverse required rezoning plans supporting the scheme to be ignored. Yong CJ also explained that s 33(1) codified the law on the issue of compensation to make plain the principles of compensation and that the phrase "and no others" at the end of s 33(1) of the Act excluded the application of the *Pointe Gourde* principle in reverse and revealed Parliament's intention to set out a comprehensive list of matters to be considered in determining the compensation payable. He stated that:

41 [2002] 4 SLR 495.
42 [1947] AC 565.
43 [1915] 2 Ch 252.

> The legislative intention behind s 33(1) was clearly to exhaustively codify the law on the issue of compensation, such that the relevant principles of compensation would be made plain on the face of the statue alone. Needless to say, the *raison d'être* of codification would be lost if the legal position were open to infiltration by common law developments …

48 Yong CJ held that the phrase "and no other" avoided uncertainties that might result if the Government were unsure of the compensation value to be given or if the process of acquisition and redevelopment were held up by specious claims.

49 In a dissenting judgment, however, Judge of Appeal Chao Hick Tin opined that if it had been Parliament's intention to exclude the negative *Pointe Gourde* principle, this would have been done so expressly. The apparent anomaly was explained in Parliament by the then Minister for Law, Prof Jayakumar in moving the Second Reading of the Land Acquisition (Amendment) Bill in 2007:[44]

> Firstly, we are moving to pay market value compensation. Therefore, even if land is not acquired, all these factors would have been taken into account in the private transaction by the willing buyer. So if there is depressant effect on the basis of the road line, or whatever, then that would have been what the willing buyer and willing seller would have transacted in the open market, and we are moving to that basis of compensation. Secondly, it can result in other landowners claiming for compensation even if the land is not acquired, if we amended the law to require the Government to make up for the loss of value under negative *Pointe Gourde*. Thirdly, I want to make this point. As far as I know, and I stand corrected if I am not, in other countries that recognise the negative *Pointe Gourde*, their Masterplan basically reflects the existing use of the site. In Singapore, on the other hand, we have adopted a forward-looking Masterplan regime where the Masterplan reflects the long-term planning intention for the land. Hence, the Masterplan shows both the upside and downzoned land use.

C. Ultra vires*? The* Teng Fuh *case*

50 Expectations change and over time owners have moved from challenging the quantum of compensation to challenging fundamental principles. An example is the 2007 case of *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue*.[45] The appellant, Teng Fuh Holdings Pte Ltd owned land used as a warehouse located along Geylang Road. The Government gazetted the property on 26 February 1983 for general

44 *Singapore Parliamentary Debates, Official Report* (11 April 2007) vol 83 at col 500 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law).

45 [2007] 2 SLR 568.

redevelopment. Twenty-three years later, the site still remained undeveloped. In 2005, Teng Fuh applied for leave for an order of *certiorari* (now known as a quashing order) and an order of *mandamus* (now known as a mandatory order) under O 53 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed). Teng Fuh wanted the 1983 acquisition to be quashed and for the land to be returned.

51 Teng Fuh argued that the acquisition was *ultra vires* as the land had not been redeveloped and had in fact been leased back to the company who remained in occupation as a licensee. Further, the land was zoned "industrial" when it was acquired in 1983 but was subsequently rezoned ten years later as "residential" in the 1993 Kallang Development Guide Plan.

52 The Court of Appeal upheld the High Court's decision that the application was out of time as it should have been made within six months from 26 February 1983 when the site was gazetted for acquisition. Interestingly, although the appeals were dismissed the Court of Appeal commented that prolonged inaction, if not explained, could constitute an arguable case "that the land was not needed for general development when it was acquired in 1983".[46] Arising from this, the then Minister for Law, Prof S Jayakumar explained in Parliament on 11 April 2007 that over the last 40 years more than 15,000 land parcels have been acquired and about 12% of the acquired lands, in terms of land area have not yet been redeveloped.[47] The rest of the lands if not fully developed are in various stages of redevelopment.

53 It is reasonable for owners to feel aggrieved if their land is left undeveloped for many years after the acquisition. However, it may not be fair to expect the comprehensive redevelopment of all lands acquired to take place immediately. As explained by the Minister in Parliament:[48]

> … Where land is acquired for comprehensive redevelopment, it is … often not possible to synchronise precisely the acquisition of the land with the redevelopment of land. Especially for a large area or precinct, a longer gestation period sometimes is almost unavoidable. This is usually because the developing agencies need to carry out site works and divert infrastructure, sometimes in several phases, to minimise disruption to the public and to prepare the land for development.
>
> … sometimes due to new factors which arise after the acquisition, it is no longer optimal to put the land to the original planned use.

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46 *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR 568 at [41].

47 *Singapore Parliamentary Debates, Official Report* (11 April 2007) vol 83 at col 376 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law).

48 *Singapore Parliamentary Debates, Official Report* (11 April 2007) vol 83 at col 376 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law).

Justice Andrew Phang also touched on this point in the High Court hearing for Teng Fuh's application and said that if there has been a change of purpose over time, that is itself not evidence of bad faith – so long as the original purpose was not tainted by bad faith.[49]

54 Today most areas have been intensively developed and therefore there is less need for lead time in site preparation and the Government has adopted a "just in time" approach to acquisition. This was the approach taken in the acquisition of Hock Kee House.

D. Hock Kee House

55 The acquisition of Hock Kee House is a good illustration of how a change in paradigm has influenced the timing of acquisition and compensation terms. In 2001, several private properties were acquired for the construction of the Circle Line Stage 2 of the MRT system. Hock Kee House, a five-storey building comprising seven shop houses and 28 residential units situated along Paya Lebar Road in the eastern part of Singapore, was not affected by the construction of the tunnel or the station. However, as it was constructed on footing resting on thick marine clay, precautionary measures were taken to provide additional support to prevent settlement of the building during the excavation work. The structural integrity of the building was closely monitored by the Land Transport Authority. Unfortunately, despite the additional measures, it was found that continued excavation works would render the building unsafe. The Government had no choice but to acquire Hock Kee House.[50]

56 The occupants were given seven weeks to vacate their properties so as not to compromise their safety and delay the construction works. Although s 34(*a*) stipulates that the degree of urgency which had led to the acquisition should not be taken into account in determining the amount of compensation, in view of the exceptionally short notice for the residents to move out, a special financial assistance package was provided to alleviate owners' hardship. This was paid as an *ex gratia* payment. In addition, non-monetary assistance such as the HDB housing assistance scheme including interim housing and sourcing for alternative shop space was extended to qualifying owners.

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49 *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR 568 at [41].

50 *Singapore Parliamentary Debates, Official Report* (19 September 2005) vol 80 at col 1308 (Yeo Cheow Tong, Minister for Transport).

E. Constitutional? The Jin Long Si Temple case

57 At times, aggrieved landowners have questioned the Government's decision to acquire their properties and not others. They felt unfairly treated. In the recent case of *Eng Foong Ho v Attorney-General*,[51] the issue was whether there was a violation of Art 12 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) which states that "All persons are equal before the law and entitled to the equal protection of the law."

58 The property known as Jin Long Si Temple ("the Temple") was compulsorily acquired in January 2003 for comprehensive redevelopment. The temple was in close proximity to two other places of worship, namely the Ramakrishna Mission ("the Mission") and the Bartley Christian Church ("the Church"), which were not acquired. The devotees argued that there was a violation of Art 12 as they had not been accorded equal treatment as compared to the worshippers of the Mission and the Church. In particular, they argued that the worshippers of the Mission and the Church were treated more favourably in that the Mission was granted conservation status in 2006 and the Church was granted permission to construct a new three-storey building. Only the Temple had been compulsorily acquired.

59 The Court of Appeal opined that such an argument would tend towards the outcome that where the property of one religious group is compulsorily acquired by law in an area where other religious groups also have properties (or places of worship), all should be similarly dealt with at the same time. If "equality of result" is what was sought, then the Government would not be able to acquire the land of any person without having to acquire the lands of every other person in the country. Further although every person is equal in the eyes of the law, the State is allowed to differentiate between persons and their constitutional rights in the application of the law since otherwise it would not be able to carry out its functions properly. The real argument then is that the factual inequality of result arose from a "normatively defective process of treatment" that was contrary to Art 12. Whether or not this was so would depend upon the presence or absence of a "reasonable nexus" between the State action and the objective to be achieved by the law.

60 The Government explained that it is an established policy to optimise land use around new MRT stations, and to amalgamate the acquired land with the adjoining state land, so as to intensify land use and maximise its development potential. The temple adjoined a large plot of state land and amalgamating the two plots of land would enable

51 [2009] 2 SLR 542.

them to develop to their optimal potential. The Church site was not chosen in that there was no adjoining state land and therefore no opportunity for amalgamation. The Mission site was under study for conservation before 2002 and was eventually gazetted for conservation in 2006. It was therefore not acquired.

61 On this basis, the Court of Appeal found that the decision to acquire the temple property was based solely on planning considerations and that there was no violation of Art 12. It pointed out that an acquisition can be challenged for bad faith but the issue of bad faith had not been raised in this case. Land acquisition is a last resort. All proceedings and considerations have to be made in a fair manner and solely on technical grounds. Nevertheless, landowners have the right to legal recourse if they are not satisfied. This is provided for in the Land Acquisition Act.[52]

V. The way forward

62 Land acquisition will always be a bone of contention and is never a happy affair. In land-scarce Singapore, land acquisition is a necessity to facilitate development for economic progress. There are times when it seems that the regime is unfair and weighted towards the general public as opposed to individual landowner's interest. Over the years, as society progressed and matured, there was also a change in mindset. New measures were introduced to ameliorate affected landowners' hardship. The amendments in 2007 to pay compensation at the prevailing market value are a step in this direction. Nevertheless, the powers of acquisition are exercised judiciously. The public received some insight into the stringent evaluation process before land is acquired at the Parliamentary debate on 11 April 2007.[53] The then Minister for Law had said:

> … [A]ll proposals for land acquisition are carefully considered. Government agencies that initiate acquisition must provide full justifications on why the acquisition is necessary. They would also have to ensure that prior approval is obtained for the intended use before requests for acquisition can be considered. For major acquisitions, the proposals will also have to be presented to a Ministerial Committee comprising the Minister for Law, Minister for National Development and which sometimes can include other Ministers like the Minister for Transport if it concerns land acquisition related to MRT or major expressway development. Finally, every proposal for land acquisition must be submitted to Cabinet for approval.

52 Land Acquisition Act (Cap 152, 1985 Rev Ed) s 23.

53 *Singapore Parliamentary Debates, Official Report* (11 April 2007) vol 83 at cols 377 and 378 (Prof S Jayakumar, Deputy Prime Minister and Minister for Law).

63 In land-scarce Singapore, we cannot jettison the Land Acquisition Act altogether. What is left to be seen is whether the compensation framework can be further improved to match owners' expectations of what is fair.