IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 90

Originating Summons No 881 of 2019

Between

Ahmad Kasim bin Adam
(suing as Administrator of the Estate of Adam bin Haji Anwar, deceased)

… *Applicant*

And

(1) Singapore Land Authority
(2) Collector of Land Revenue
(3) Attorney-General of the Republic of Singapore

… *Respondents*

JUDGMENT

[Administrative Law] — [Judicial review] — [Leave to commence judicial review] — [Limitation period]
[Administrative Law] — [Natural justice]
[Administrative Law] — [Remedies] — [Quashing order] — [Mandamus]

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v
Singapore Land Authority and others

[2020] SGHC 90

High Court — Originating Summons No 881 of 2019
Audrey Lim J
18 November 2019, 20 January, 27 March 2020

5 May 2020 Judgment reserved.

Audrey Lim J:

1 This matter ("OS 881") pertains to a plot of land known as Lot 28W Mukim 27 ("the Land") which was compulsorily acquired in 1987 ("the Acquisition"). The Land has an area of about 9,636.6 sqm and an entry from Palm Drive. The applicant, Mr Ahmad Kasim bin Adam ("Mr Ahmad") brought OS 881 on behalf of the estate of his father, Mr Adam bin Haji Anwar ("Mr Adam"). He sought leave to apply for an order to quash the Acquisition and the award of compensation by the Collector of Land Revenue ("the Collector") made in 1988 ("1988 Award") pertaining to the Acquisition of the Land in so far as it relates to an area of 405.5 sqm ("the Plot") with a house ("the House") thereon, and to mandate the Collector to conduct a fresh inquiry in respect of the appropriate compensation to be paid to Mr Adam's estate.

Background to the Acquisition

2 The Land was a Muslim cemetery. It was compulsorily acquired by the State in 1987 by a declaration under s 5 of the Land Acquisition Act (Cap 152, 1985 Rev Ed) ("LAA") in force on 27 November 1987 ("the LAA 1987"). The declaration was published in the Government Gazette Extraordinary on 27 November 1987 ("the 1987 Gazette").[1]

3 At the time of the Acquisition, the most recent traceable title to the Land showed that it belonged to one Mr Moona and mortgaged to one Mr Chitty. As no other interests in the Land had been registered with the Registry of Land Titles and Deeds ("the Registry"), the 1987 Gazette named Mr Moona as the "owner" and Mr Chitty as the "mortgagee" of the Land ("the paper owners").[2] Notices of Acquisition under s 8 of the LAA 1987 dated 7 January 1988 ("7 January 1988 Notices") were addressed to the paper owners but could not be personally served on them as they could not be traced. These notices were thus posted on the Land Office's notice board.[3] The 7 January 1988 Notices called on the paper owners to appear at the Office of the Collector on 3 March 1988 to state the nature of their interest in the land, any claim in compensation that they may have and any objections to the measurements cited in respect of the Land.

4 On 22 January 1988, a Land Office Notice ("22 January 1988 Notice") was posted on the Land pursuant to s 8 of the LAA 1987. It stated that the Land was required under the LAA 1987 and invited persons interested to appear at the Land Office on 3 March 1988 to state their interest in the Land and any

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1 Tan Hwee Ching's 1st affidavit dated 30 August 2019 ("Tan's 1st Affidavit) at [50].

2 Tan's 1st Affidavit at [53]–[54].

3 Tan's 1st Affidavit at [55] and pp 93–94, 102–103.

claims to compensation.[4] The 22 January 1988 Notice was posted on the Land by one Mr Halim. A copy of the same notice bore a stamp with his name as the person who posted the notice and on which was written "Posted on site", although it is unknown precisely where on the Land it was posted. Ms Tan Hwee Ching ("Ms Tan") from the Singapore Land Authority ("SLA") attested that Mr Halim, who was 71 years old at the time of hearing, was unable to recall the Land.[5]

5 However, no one appeared before the Land Office to state their claims. On 18 March 1988, the Collector awarded $18,800 (*ie,* the 1988 Award) as compensation for the Acquisition to the paper owners under s 10 of the LAA 1987. As the 1988 Award could not be served on the paper owners, it was posted on the Land Office Notice Board on the same day. The paper owners did not collect the award and the sum was paid into court pursuant to a court order of 20 June 1988 in Originating Summons No 600 of 1988 ("OS 600 of 1988").[6]

6 The Land was vested in the State on 12 September 1988. On that date, the Land Office's Notice of Taking Possession ("September 1988 Notice") was posted on the Land pursuant to s 16 of the LAA 1987. The September 1988 Notice also showed that the notice was posted on the Land by one Mr Khosni, a Land Inspector with the Land Office.[7]

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4 Tan's 1st Affidavit at [59].

5 Tan's 1st Affidavit at [60] and p 91.

6 Tan's 1st Affidavit at [55] and pp 96, 102–103 and 107.

7 Tan's 1st Affidavit at [59] and [61] and p 115.

7 Mr Khosni attested as follows.[8] He went to Palm Drive to take possession of the cemetery. He saw houses on both sides of the road, until the road came to an end where "there was a temporary structure which looked like a house made of wood and other materials ('**the Structure**')" [emphasis in original]. He did not notice anyone around the Structure, and saw that behind the Structure was a cemetery with graves going up a high slope. The Land Office's practice was to post the notice at a conspicuous place. Where there was a structure on the land, the practice was to post the notice on the structure. Accordingly, he posted the September 1988 Notice on the Structure. He also recalled that the Structure looked very different from other houses that he saw along Palm Drive because the other houses were permanent structures.

8 Mr Khosni, in his affidavit, marked the location of the Structure on a plan showing Palm Drive and the Land. Ms Tan attested that the location of the Structure as described by Mr Khosni corresponded to the location of the House on the Land.[9]

9 The cemetery was exhumed in 2009.[10]

Mr Ahmad's claim

10 Mr Ahmad stated as follows. His grandfather helped to maintain and upkeep the cemetery, and subsequently built a Malay-style kampong house (the House) on the Land as his new permanent abode by around 1955. Thereafter,

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8 Khosni's affidavit dated 30 August 2019 ("Khosni's Affidavit) at [5]–[6].

9 Tan's 1st Affidavit at [62].

10 Tan's 1st Affidavit at [14].

his grandfather's family resided and occupied the Land, with Mr Adam taking care of the Land after Mr Ahmad's grandfather passed away.[11]

11 Mr Ahmad claimed that the 22 January 1988 Notice was never posted on the Land and, in any event, Mr Ahmad and his family (who were residing on the Land at the material time) were entirely unaware of that notice. Also, notices similar to the 7 January 1988 Notices were never sent to him or Mr Adam. Even after the Collector had made the 1988 Award, Mr Adam, Mr Ahmad and his family continued to reside in the House and were oblivious to the Acquisition.[12]

12 Mr Ahmad claimed that from 1964 to 2013, the government recognised Mr Adam as the "registered owner" of the House. Mr Adam paid the property taxes from 1964 until his demise in May 1997 and for the sanitary and drainage system installed for the House in 1974. After Mr Adam's demise, Mr Ahmad paid property taxes until 2013, and utility bills and television licences until 2016, as executor of Mr Adam's estate.[13]

13 In March 2009, Mr Ahmad noticed that the graves in the cemetery on the Land were being exhumed. He then made inquiries and discovered that the Land had been compulsorily acquired in 1988. Feeling aggrieved, Mr Ahmad wrote a letter on 5 February 2010 ("the MP Letter") to a Member of Parliament overseeing his constituency. In particular, he stated as follows:[14]

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11 Ahmad's 1st affidavit dated 10 July 2019 ("Ahmad's 1st Affidavit") at [11]–[12].

12 Ahmad's 1st Affidavit at [15]–[16] and [19].

13 Ahmad's 1st Affidavit at [20].

14 Ahmad's 1st Affidavit at [22] and pp 82–84.

(a) He and his family had lived in the House for more than five decades since the mid-1950s. About six months before 5 February 2010, he discovered that the Land had been acquired by the government in 1988 and his family was kept in the dark about it. He was later told by SLA to vacate the premises.

(b) He and his family never wanted and did not wish to impose any claim on the Land as they knew it was *waqaf* land and they believed that it was bequeathed for public use. They did not wish to challenge the government's right to the premises, nor did they send the MP Letter "as a legal case to stake a claim on the right of the land". That said, they were upset at not being given any notice of the Acquisition all these years. They also "concede[d]" that they were not in a capacity to challenge the vacation order and will eventually leave the House and let "the bulldozer to run it down".

(c) However, Mr Ahmad and his family asked for some gratuity payment or another house, for the effort they had put in all those decades in maintaining the Land at their own expense. Mr Ahmad also stated that they "never registered interest nor claimed ownership by adverse possession and [they] never regretted it as [they] never owned that land".

14 The MP Letter was forwarded to SLA who received it on 11 February 2010.[15] The following then ensued.

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15 Ahmad's 1st Affidavit at p 81.

Subsequent correspondence between parties

15 After some discussions between SLA and Mr Ahmad, SLA formally replied on 9 July 2012 to state that it was unable to accede to his request for a replacement house or payment of reasonable compensation, and also informed him that he was occupying the Land without lawful authority. SLA further stated that, on a strictly without prejudice basis, it was evaluating an *ex gratia* payment and would update Mr Ahmad.[16] SLA then offered an *ex gratia* payment of $17,882.05 to Mr Ahmad on 17 October 2012 and again on 20 November 2012, which he rejected. Mr Ahmad did not make any counter-offer.[17]

16 On 22 November 2013, SLA reiterated to Mr Ahmad that he (or Mr Adam) was not entitled to remain on the Land or the House regardless of whether they were a "person interested" under the Land Acquisition Act. SLA reiterated its offer of *ex gratia* payment of $17,882.05. Alternatively, if they did not wish to relocate, SLA was willing to offer a Temporary Occupation Licence ("TOL"), on a without prejudice basis, for one year and which may be renewed on a yearly basis.[18] Mr Ahmad did not accept the *ex gratia* payment or the TOL.

17 On 26 May 2014, SLA informed Mr Ahmad that he was in "unauthorised and unlawful occupation of the Land" as a trespasser and asked him to vacate the Land.[19] On 2 July 2014, SLA informed Mr Ahmad that it could not accede to his requests to extend time to vacate the Land and for a higher compensation amount. SLA stated that, on 22 November 2013, it had offered

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16 Ahmad's 1st Affidavit at p 86.

17 Tan's 1st Affidavit at [85] and p 195; 18/11/19 Notes of Evidence ("NE") at p 3.

18 Tan's 1st Affidavit at [84]–[85] and pp 198–199.

19 Ahmad's 1st Affidavit at p 89.

him an *ex gratia* payment of $17,882.05 which he did not accept. It would allow Mr Ahmad up to early August 2014 to vacate the Land.[20]

18 On 31 July 2014, Mr Ahmad's lawyers informed SLA for the first time that the Acquisition of the Land was carried out in breach of natural justice; that Mr Ahmad was the rightful owner in possession of the Land; and that Mr Ahmad was entitled to compensation assessed at the prevailing market rate as the "adverse possessory owner". Mr Ahmad also requested SLA to inform him of the basis of assessment for the *ex gratia* payment.[21]

19 On 16 September 2014, SLA responded to re-open its offer of an *ex gratia* payment of $17,882.05, which could be sufficient for a down payment of a Housing and Development Board ("HDB") studio apartment "based on the selling prices at recent BTO exercises" and granted Mr Ahmad an extension of time to vacate the Land. The next day, the Attorney-General's Chambers ("AGC") also responded to state the government's position that there was no breach of natural justice in the Acquisition of the Land, amongst other things. On 29 September 2014, SLA requested Mr Ahmad's cooperation to "quickly vacate the Land in compliance with the law" and offered an *ex gratia* payment of $36,000 to facilitate an amicable settlement of the matter if he would vacate the Land by 15 October 2014.[22]

20 On 3 October 2014, Mr Ahmad replied to AGC and SLA to say that he was "not disputing in respect of the acquisition as declared under [s]ection 5 of the [LAA 1987]". He maintained that no notice of the Acquisition was posted

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20 Ahmad's 1st Affidavit at p 90.

21 Ahmad's 1st Affidavit at pp 92–93.

22 Ahmad's 1st Affidavit at pp 95–99; Tan's 1st Affidavit at pp 218, 221–223, 229–230.

on the Land, as otherwise he would have sought timely legal advice and submitted his claims as an adverse owner of the Land. He also rejected SLA's offer of $36,000, but accepted SLA's earlier offer of a TOL.[23]

21 SLA then issued three successive TOLs that covered the period from 2014 to 2016 and Mr Ahmad was allowed to continue living at the House. He delivered vacant possession of it to SLA on 30 June 2016, shortly before the third TOL expired on 19 July 2016.[24]

OS 397 of 2015

22 On 30 April 2015, Mr Ahmad commenced Originating Summons No 397 of 2015 ("OS 397"). He sought the following:

(a) A declaration that he, either personally or as the personal representative of Mr Adam's estate, as at 12 September 1988, had acquired title by adverse possession to the Land, including the House, and that the rights and titles of the paper owners be extinguished.

(b) A declaration that the 1988 Award was invalid and should be set aside.

(c) A declaration that prior to or at 27 November 1987, Mr Ahmad and/or Mr Adam was a person interested in the Land including the House.

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23 Ahmad's 1st Affidavit at pp 100–103; Tan's 1st Affidavit at pp 232.

24 Tan's 1st Affidavit at pp 238–282 and 307; Ahmad's 1st Affidavit at [26] and [28].

(d) An order for a re-hearing under s 8 of the LAA 1987 for the assessment of compensation for the Acquisition which Mr Ahmad or Mr Adam's estate should be entitled to.

23 Mr Ahmad did not challenge the Acquisition of the Land.[25] The High Court dismissed Mr Ahmad's claim and found that he had not acquired title to the Land by adverse possession.

CA 4 of 2017

24 Mr Ahmad appealed against the decision in OS 397, in Civil Appeal No 4 of 2017 ("CA 4/2017"). The Court of Appeal ("CA") gave its judgment in *Ahmad Kasim bin Adam (suing as an administrator of the estate of Adam bin Haji Anwar and in his own personal capacity) v Moona Esmail Tamby Merican s/o Mohamed Ganse and others* [2019] 1 SLR 1185 ("CA Judgment"). There, it considered the following issues:

(a) Whether Mr Ahmad or Mr Adam had acquired title to the Land or House by adverse possession.

(b) If the answer to (a) is "yes", whether the Collector had failed to comply with the notice requirements under s 7 of the LAA 1987 or committed a breach of natural justice by failing to give notice of the Acquisition and inquiry to Mr Ahmad or Mr Adam.

(c) If the answer to (b) is "yes", the remedy that Mr Ahmad or Mr Adam was entitled to.

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25 Ahmad's 1st Affidavit at [33]; Court of Appeal's Judgment in CA 4 of 2017 at [21].

25 The CA found that Mr Adam was in factual possession of the House from 1955 to 1967 and had adversely acquired title to the House and the Plot, and that the rights of the paper owners were extinguished in 1967.

26 The CA further stated that whether there was a breach of natural justice turned on whether notice may be deemed to have been served on Mr Adam by the posting of the notice on the Land and whether the LAA 1987 required notice to be affixed to the House. The CA did not find it necessary to resolve that issue because even if Mr Ahmad were to succeed in proving a breach of natural justice, he had no remedy before the court. In gist, the CA stated as follows.

(a) There was no legal basis to award monetary compensation to Mr Adam's estate as it was not prayed for in OS 397. Moreover, the LAA 1987 does not give the court jurisdiction to issue compensation at first instance. It is the Collector who makes an award after an inquiry, which is appealable to the Appeals Board and thereafter to the CA on a question of law.

(b) Compensation was not a suitable form of relief for a lack of notice or breach of natural justice in the making of the 1988 Award.

(c) The 1988 Award cannot be set aside by declaratory relief and an order for a fresh hearing by the Collector, as s 53 of the LAA 1987 imposes an absolute bar for declarations to set aside the Collector's award.

(d) Any compensation which Mr Adam may be entitled to would have been paid (if at all) as an award made by the Collector. The appropriate procedure for challenging the Collector's exercise of his powers is by judicial review, and the appropriate remedy for the alleged

breaches would be to quash the 1988 Award and mandate the Collector to conduct a fresh inquiry.

27 Finally the CA opined on the principles for assessing compensation in that case. If a breach of natural justice was established, Mr Ahmad's remedy was to be placed in a position as if Mr Adam's estate had received an award of compensation in 1988, with the time value of the award being accounted for through an appropriate adjustment or award of interest.

Events after CA 4 of 2017

28 Following the CA Judgment, AGC wrote to Mr Ahmad's lawyers on 29 April 2019, highlighting that SLA had offered compensation of up to $53,029 on an "open" basis, and although Mr Ahmad had claimed sums of $4.33m to $11.015m, SLA's offer remained opened for acceptance. Mr Ahmad did not accept the offer.[26]

29 On 10 July 2019, Mr Ahmad filed OS 881 ("Leave Application").

Grounds for the Leave Application

30 Mr Ahmad's grounds for leave for a quashing order, or alternatively, a quashing order coupled with a mandatory order, are as follows.[27]

31 First, the 1987 Gazette, in so far as it pertained to the Plot, was issued in bad faith and amounted to the use of power for an improper purpose. Although

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[26] Ahmad's 1st Affidavit at [43] and p 134.

[27] Applicant's Written Submissions (11 November 2019) ("AWS") at [55].

the Land was acquired for "general development", no such development took place from 1988 to at least 2016.[28]

32 Second, the Acquisition was *ultra vires* s 8 of the LAA 1987 and conducted in bad faith or without proper care. The Acquisition was also procedurally improper for contravening s 8 of LAA 1987.[29] No notice was provided to Mr Adam or Mr Ahmad, although the government knew and treated Mr Adam as the owner of the House and the Plot, and any reasonable attempt to mark out and measure the Land (which is required by s 7 of the LAA 1987) and which ought to include a physical inspection of the Land would have revealed the existence of the House. Mr Adam and Mr Ahmad had suffered great prejudice as the Collector had failed to give them notice and they were not able to appear before the Collector to make submissions on the basis for assessment of compensation for the Acquisition or to make any claim on the 1988 Award. This resulted in a loss of opportunity to find and purchase a suitable replacement residence. Whatever amounts that SLA had offered to them even by AGC's letter of 29 April 2019 (see [28] above) would be insufficient for Mr Ahmad to buy a replacement residential property today.

33 Third, the Collector failed to take into account the following considerations in arriving at the quantum of the 1988 Award, namely, the existence of the House at the point of the Acquisition and the consequence of the Acquisition in that Mr Adam and his family would be compelled to change residence and incur reasonable expenses for that change.[30]

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28 Statement filed by Mr Ahmad pursuant to O 53 Rules of Court ("Statement") at [31]; Ahmad's 1st Affidavit at [46].

29 Statement at [33]–[35]; Ahmad's 1st Affidavit at [49]–[54].

30 Statement at [38]; Ahmad's 1st Affidavit at [55]–[56].

34 Fourth, in the event that the 1988 Award pertaining to the Plot is quashed, the Collector must conduct a fresh inquiry in respect of the appropriate compensation to be paid to Mr Ahmad, with such compensation to be calculated based on the LAA in force on 10 July 2019 (*ie,* the date of filing of OS 881) or as may be determined to be applicable.

35 Finally, that the time limited for making the application of OS 881 be extended to the date of filing of OS 881.[31]

36 On 18 November 2019 at the first hearing before me, Mr Ahmad's counsel, Mr Koh, sought leave to amend the originating summons, which I granted. Essentially, the amended originating summons thus sought leave:

(a) To quash the declaration under the 1987 Gazette, the Acquisition and the 1988 Award.

(b) Alternatively, to quash the 1988 Award, and to mandate the Collector to conduct a fresh inquiry of the appropriate compensation to be paid to Mr Ahmad with such compensation to be calculated based on the LAA 1987 and the *ex gratia* "top-up" policy of the government reflected in various Parliamentary Debates ("*ex gratia* Top-Up").[32]

Whether delay in the Leave Application is accounted for

37 The relevant sections of O 53 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") provide as follows:

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31 Statement at [2(c)]; Ahmad's 1st Affidavit at [2(c)].

32 18/11/19 NE; Originating Summons (Amendment No. 1).

> **No application for Mandatory Order, etc., without leave (O.53, r.1)**
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> **1**.—(1)…
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> (2) An application for such leave must be made by *ex parte* originating summons and must be supported by a statement setting out … the relief sought and the grounds on which it is sought, and by an affidavit … verifying the facts relied on.
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> …
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> (6) Notwithstanding the foregoing, leave shall not be granted to apply for a Quashing Order to remove any judgment, order, conviction or other proceeding … unless the application for leave is made within 3 months after the date of the proceeding … or … the delay is accounted for to the satisfaction of the Judge to whom the application for leave is made …

38 The parties agreed that under O 53 r 1(6) of the ROC (Cap 322, R 5, 1997 Rev Ed) as in force at the material time ("ROC 1997 Rev Ed"), the Leave Application had to be made within six months (rather than three months) "after the date of the proceeding or order" ("Time Limit") which is the date the declaration was issued for the acquisition of the Land (*ie*, in November 1987) (*Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR(R) 568 ("*Teng Fuh Holdings*") at [17]). Apart from that, the wording in O 53 rr 1(2) and 1(6) of the ROC 1997 Rev Ed is in *pari materia* with the provisions of the ROC.

39 While the Time Limit in O 53 r 1(6) applied only to quashing orders and not mandatory orders, an application for a mandatory order should be made without undue delay (*UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 at [37]) or within a reasonable time (*Per Ah Seng Robin and another v Housing and Development Board and another* [2016] 1 SLR 1020 ("*Per Ah Seng*") at [49]).

40 In *Per Ah Seng* at [51], the CA held that where the decision sought to be impugned is borne out of a multiple-step decision process, the Time Limit may start to run from the date of the final step in that process, or may even run later where the respondent's conduct indicates a willingness to reconsider its earlier decision. In this regard, Mr Koh submitted that the Time Limit started to run from 12 September 1988, the date the Land vested in the State.[33] Regardless of whether the Time Limit started to run from November 1987 (the 1987 Gazette date) or 12 September 1988, the fact remained that Mr Ahmad was clearly out of time by more than 30 years.

41 The issue then is whether the delay is "accounted for to the satisfaction of the Judge to whom the application for leave is made". In this regard, the onus is on the applicant, Mr Ahmad, to *account for the delay* (*Teng Fuh Holdings* at [18]) and to persuade the court that he has a satisfactory *explanation or reason* for the delay (*Per Ah Seng* at [51] and [54]). It was incumbent on Mr Ahmad to set out these reasons in the statement in support of the Leave Application pursuant to O 53 r 1(2) ("the O 53 Statement"), or at least, in his affidavits filed in support of the Leave Application.

42 I find that Mr Ahmad had failed to account for or explain the delay, let alone to my satisfaction. Even if Mr Ahmad claimed to have known about the Acquisition only around March 2009 (as it is not disputed that no notice to acquire the Land was served personally on Mr Adam or him), he had not explained why he took *ten years* (from March 2009) before filing OS 881. Even if I were to accept that, by filing OS 397 to set aside the 1988 Award, he is considered to have taken steps in this regard – this was not even a reason that

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33 AWS at [60].

he has given to explain the delay (of *six years* from March 2009 to April 2015 when he filed OS 397). Indeed, regardless of whether the delay was some 30 years, ten years or six years, Mr Ahmad *did not give any reason or explanation whatsoever*, as to why he did not file the Leave Application earlier.

43 Whilst Mr Ahmad had filed the O 53 Statement and two affidavits in support, he did not identify or explain the grounds or facts he was relying on to account or explain the delay in filing the Leave Application and to ask for an extension of time. Indeed, after Mr Ahmad filed the first supporting affidavit on 10 July 2019, AGC wrote to his lawyers on 16 July 2019 to ask if he would be amending the O 53 Statement or filing further affidavits to state the grounds and facts he was relying on for an extension of time. When AGC did not receive a response, it wrote to Mr Ahmad's lawyers again on 25 July 2019 with the same request. AGC also informed Mr Ahmad that it was an abuse of process for him to pray for an extension of time in the Leave Application whilst refusing to state the supporting grounds and facts, and stated that at the next pre-trial conference ("PTC") on 29 July 2019, it would submit that OS 881 was defective and amounted to an abuse of process of the court.[34] In this regard, AGC had asserted *twice* that Mr Ahmad had failed to provide any grounds or facts supporting his prayer for an extension of time.

44 Mr Ahmad's lawyers replied to AGC on 26 July 2019 stating that they disagreed with AGC's statements in the aforesaid two letters. They stated that AGC was entitled to "make whatever submissions [it] wish[es] at the [PTC]" and that Mr Ahmad was reserving his position on the merits of AGC's

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34 Tan's 1st Affidavit at [37], pp 442 and 446; 18/11/19 NE.

submissions to a hearing in the proper forum.[35] At the PTC on 29 July 2019, Mr Ahmad's lawyers reiterated before the registrar that they "do not have to specifically set out the grounds for the time taken", and that they had set out the relevant facts.[36] Subsequently, Mr Ahmad filed his second affidavit dated 27 September 2019 to support the Leave Application but again did not mention the reasons for the delay in taking out the Leave Application. Even Mr Koh's written submissions dated 11 November 2019 filed in support of the Leave Application did not explain why Mr Ahmad had delayed in filing the Leave Application, but merely set out the chronology of events that transpired. This was despite well knowing the CA's remarks in the CA Judgment (at [90]) that Mr Ahmad would face an "obvious hurdle" of the Time Limit and that he would have to account for the delay.

45 It is clear that Mr Ahmad had neither accounted for nor explained the delay in filing the Leave Application. Setting out a chronology of events in itself is not the same as accounting for, or explaining, the delay under O 53 r 1(6) of the ROC, unless, in an appropriate case, the events clearly speak for themselves. Mr Ahmad had not explained *what led to his inactivity or delay* in filing the Leave Application until July 2019, in order for the court to determine if such inactivity or delay was excusable.

46 Mr Koh submitted that the applicant only had the burden to show facts which warranted the court exercising its discretion in his favour and cited *Sun Jin Engineering Pte Ltd v Hwang Jae Woo* [2011] 2 SLR 196 at [41].[37] However,

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35 Tan's 1st Affidavit at p 450.

36 Notes of Evidence of PTC on 29 July 2019 at p 3 (Tan's 1st Affidavit at p 454).

37 Applicant's Supplementary Written Submissions dated 19 March 2020 ("AFS") at [7]–[8].

that was not a case which pertained to an application for leave under O 53 r 1 of the ROC which expressly provides that the delay must be accounted for to the Judge's satisfaction. In any event, on the present facts, Mr Ahmad had not identified the grounds or facts he was relying on to account or explain the delay in filing the Leave Application.

47 The CA in *Per Ah Seng* ([39] *supra*) stated (at [54]) that the court should refuse an extension of time where satisfactory reasons are lacking. To illustrate the point, it set out cases where the reasons for the delay were apparent or given by the applicant. Further, Belinda Ang J held in *Chai Chwan v Singapore Medical Council* [2009] SGHC 115 at [14] that:

> … The question of whether the period of delay can be categorised as unduly excessive on the basis of being inexcusable is a question of fact for the court. Each case is infinitely varied and distinctly fact-sensitive … The lapse of time *must be explained fully by the applicant* so that the court is able to satisfy itself that the delay has been adequately accounted for …
>
> [emphasis added]

48 Without *any* explanation provided by Mr Ahmad for why he failed to file the Leave Application until July 2019 and for the period of delay, I am not able to satisfy myself that the delay had been adequately accounted for. Even if the court is minded to infer reasons from the chronology of events as set out in Mr Ahmad's O 53 Statement and affidavits, there are too many ambiguities to make a reasonable inference. For instance, was Mr Ahmad asserting that he was all throughout genuinely attempting to resolve the matter with SLA, and if so, what was the evidence to back up his assertion? Was he claiming that he had been advised by his lawyers to attempt a certain course of action before taking out the Leave Application and that he had followed his lawyers' advice? Was it that he had no means to take out the Leave Application sooner? Was it that SLA

and/or AGC had given him the impression that he should hold his hands on the matter whilst they considered (or reconsidered) his compensation claim? Or was Mr Ahmad saying that, by commencing OS 397 in 2015, he thought he had complied with the proper procedure for the Leave Application?

49 It was not apparent from the mere laying out of the chronology of events, how the delay occasioned by filing the Leave Application only in 2019 had been satisfactorily accounted for. It must be remembered that Mr Ahmad had engaged lawyers even back in March *2010*, when AUP Law Corporation (then acting for Mr Ahmad) was tasked to prepare a valuation report for the Land.[38] In October and November 2011, SLA and AUP Law Corporation corresponded in relation to the Land.[39] Mr Ahmad was thus represented by lawyers in relation to the Land issue well before SLA offered an *ex gratia* payment to him. He continued to be represented by lawyers in OS 397, CA 4/2017 and in the current proceedings (OS 881). Pertinently, AGC had also expressly informed him *twice* in these proceedings (through his lawyers) to state the reasons for the delay in making the Leave Application, and yet he had refused to do so (see above at [43]). His deliberate silence was unhelpful to his case.

Whether Mr Ahmad had the interest, knowledge and means to have commenced the Leave Application in time

50 Even if it was possible to overlook the lack of an explanation from Mr Ahmad, I do not think that Mr Ahmad had met the requirement under O 56 r 1(6) of the ROC. Mr Ahmad had the interest, knowledge and means to have acquired information to make his application for judicial review long before the

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38 Tan's 1st Affidavit at [8] and p 168; 27/3/20 Minute Sheet.

39 Tan's 1st Affidavit at p 180.

Leave Application was filed (see *Teng Fuh Holdings* ([38] *supra*) at [23]). Even if I were to accept that Mr Ahmad only knew of the Acquisition in March 2009, his purported grounds for judicial review would have been known to him by that date. In *Zheng Jianxing v Attorney-General* [2014] 3 SLR 1100 at [40], the High Court held that ignorance in the sense that the applicant is a lay person who did not have the benefit of legal advice would not be sufficient explanation for a delay in bringing judicial review proceedings. In the present case, Mr Ahmad was not even an uninformed person. He has been represented by lawyers *since 2010* pertaining to the issue of the Land. He had also claimed that Mr Adam had been living on the Plot for decades, had consistently maintained that Mr Adam and his family had been lawfully residing on the Land, and that he was an interested person under s 8(2) of the LAA 1987.[40]

51 Despite having knowledge of the Acquisition by around March 2009, Mr Ahmad has failed to explain why he thereafter took six years to file OS 397, let alone ten years to file OS 881. This is even if I were to disregard the period from November 1987 until around March 2009.

52 As early as 9 July 2012, SLA had informed him that he was occupying the Land without lawful authority and had informed him that it was considering an *ex gratia* payment to him on a strictly without prejudice basis (see [15] above). SLA reiterated on numerous occasions thereafter that Mr Ahmad or Mr Adam was not entitled to remain on the Land and even offered a TOL as early as 2013 (see [16] above). In *Per Ah Seng* ([39] *supra*), the CA held that the appellants had satisfactorily accounted for the delay. The appellants there were engaged in a long-drawn process with HDB to persuade HDB to reconsider its

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40 18/11/19 NE.

decision to compulsorily acquire the flat in question, and HDB was also clarifying and eliciting more information from the appellants, which demonstrated that it was willing to reconsider its decision (see [56]–[58]). On the contrary, in the present case SLA had made its stand clear on the Acquisition, and Mr Ahmad himself stated that he would not challenge the Acquisition (see further [53] below). There was no evidence that SLA or anyone had ever suggested to or informed Mr Ahmad or Mr Adam that it was prepared to reconsider or reverse the Acquisition. SLA had also made it clear that its offers with respect to the *ex gratia* payment and TOL were always on a without prejudice basis. When Mr Ahmad's lawyers informed SLA in July 2014 that there was a breach of natural justice, SLA made clear the government's position that there was no such breach (see [19] above). Even when the TOLs were granted to Mr Ahmad from 2014 to 2016, SLA made clear that it was on the basis that he accepted the Land (including the House) was State Land owned by the government. The upshot is that Mr Ahmad knew of SLA's consistent stand on the Land all throughout and as early as July 2012.

53 Indeed, Mr Ahmad had, after discovering the Acquisition, on various occasions stated that *he would not challenge the Acquisition*. In the MP Letter of 2010, he stated that he was not challenging the government's right to the Land and would eventually leave the House. In his affidavits filed in 2015 for OS 397, Mr Ahmad "made it clear" that he was "not challenging the government's right to the acquisition already made even without [his] prior knowledge at all".[41] This was consistent with his prayers in OS 397 where he only sought to set aside the 1988 Award and asked for a re-assessment of the

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41 Ahmad's affidavit dated 28 April 2015 at [15]; Ahmad's affidavit dated 25 September 2015 at [15].

compensation. He reiterated in his affidavit filed in September 2016 (for OS 397) that he was not challenging the Acquisition,[42] and in the CA Judgment, the CA noted that Mr Ahmad was not challenging the Acquisition of the State's title to the Land (at [74]). In his affidavit filed in this OS 881, he repeated that he did not challenge the Acquisition in OS 397.[43] His U-turn now in OS 881 to seek to quash the 1987 Gazette and Acquisition was not explained.

54 In any event, there was no evidence that Mr Ahmad had made any serious or genuine attempts to resolve the dispute without litigation, such that he can expect a certain measure of latitude from the court for the delay in filing the Leave Application (see *Per Ah Seng* ([39] *supra*) at [55]). SLA's offers of *ex gratia* payment on numerous occasions were rejected by Mr Ahmad, without any counter-offer from him. It was only in his affidavit filed on 13 September 2016 (for OS 397) that Mr Ahmad then provided a valuation of the House at $4.33m. Before the CA in CA 4/2017, he relied on a valuation report that valued the House at some $7.3m (as at 2009) or $11m (as at 2017), which the CA found to be an "extravagant claim for compensation".[44]

55 Further, Mr Ahmad's significant delay in taking out OS 881, and for the first time since 2010, challenging the validity of the Acquisition, is prejudicial to SLA. Given the passage of time, certain information and documents were no longer available. For example, Mr Halim, who is now more than 71 years old and who posted the 22 January 1988 Notice on the Land, was unable to recall the Land or where he posted the notice on the Land (see [4] above).

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42 Ahmad's affidavit dated 13 September 2016 at [14(a)].

43 Ahmad's 1st Affidavit at [33].

44 Respondents' written submissions dated 11 November 2019 ("RWS") at [74(c)–(d)]; CA's decision on costs (in CA 4/2017) dated 9 May 2019.

Furthermore, given the passage of time, the Inland Revenue Authority of Singapore ("IRAS") stated that the relevant documents were no longer available for them to ascertain when or how property tax came to be levied on the House.[45] If Mr Ahmad had contested the validity of the Acquisition as early as 2009 or 2010, it could have been possible for SLA to have obtained these documents in anticipation of litigation and thus assisted the court in this regard.

56 I thus find that Mr Ahmad had failed to account for the delay in filing the Leave Application, let alone to my satisfaction. He thus failed to cross the threshold requirement under O 53 r 1(6) of the ROC. Mr Ahmad's application for leave to seek a mandatory order was also not made within a reasonable time. Further, his complete silence in explaining his delay (particularly well knowing that he had to account for the delay) and his U-turn now in seeking to quash the 1987 Gazette and the Acquisition pointed to a lack of *bona fides* in his Leave Application. As such, I would dismiss Mr Ahmad's claim.

Prima facie case of reasonable suspicion

57 Assuming that Mr Ahmad had been able to account for the delay to my satisfaction (which I had found that he had not), I turn to whether he would have satisfied the conditions necessary for leave to be granted to commence judicial review proceedings, namely that: (a) the subject matter must be susceptible to review; (b) the applicant must have sufficient interest in the matter; and (c) the material before the court discloses an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought (as reiterated recently in *Lee Pheng Lip Ian v Chee Fun Gee and others* [2020] 1 SLR 586 at [24]). The only question before me at the leave stage pertains to condition (c) – which is a

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45 Tay Ming Wei's 1st affidavit dated 30 August 2019 ("Tay's 1st Affidavit") at [4].

relatively low threshold for the granting of leave ("threshold standard") (see *Teng Fuh Holdings* ([38] *supra*) at [35]). Nevertheless, bare assertions without any credible basis will not satisfy this threshold (*Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] 2 SLR 844 at [72]) and the court will not hesitate to dismiss unmeritorious judicial review applications at the leave stage to prevent a waste of judicial resources and to protect public bodies from harassment (*AXY and others v Comptroller of Income Tax* [2018] 1 SLR 1069 at [34]).

Whether the 1987 Gazette was issued in bad faith and whether the Land was not acquired for the declared purpose

58 Prolonged inaction, if unexplained, could constitute a *prima facie* case of reasonable suspicion that the Land was not acquired for the declared purpose (see *Teng Fuh Holdings* ([38] *supra*) at [38]).[46] Mr Ahmad claimed that the 1987 Gazette was issued in bad faith and amounted to the use of power for an improper purpose. This is because the Land was acquired for "general development", but no such development took place until at least 2016. I find that Mr Ahmad had not met the threshold standard on the evidence.

59 In *Teng Fuh Holdings* ([38] *supra*), the appellant's land was acquired in 1983 for "general redevelopment" but was not redeveloped for the following 22 years. The court found (at [36]–[40]) that no explanation was offered by the HDB, who could have explained the specific purpose the land was intended for at the time of the acquisition and whether there were any subsequent changes to its plan. Consequently, the court held (at [42]) that had the application not been made out of time, leave would likely have been granted.

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46 Tan's 1st Affidavit at p 86.

60 In the present case, Ms Tan had explained that in August 1973, the Muslim cemetery on the Land was closed for further burials, and this was notified by an order published in a Subsidiary Legislation Supplement. Thus, the Land could neither be used for further burials nor developed for other uses as it was then zoned for cemetery use only. Ms Tan explained that in November 1987, the Land was compulsorily acquired pursuant to the government's policy to acquire private cemeteries for development in order to optimise land use in Singapore, and exhibited a *Straits Times* report dated 4 October 1987 published by the Prime Minister's Office ("PMO") in support. In that report, PMO also explained that "clans, associations and religious institutions that own the cemeteries would find it extremely difficult, on their own, to exhume the graves and provide alternative facilities for burial or cremation" and that "huge development charges have to be paid before development can proceed as the lands are mostly zoned for cemetery use only". A similar report was also published in *Berita Minggu* (a Malay language newspaper) on 4 October 1987.[47]

61 Ms Tan further explained that at the time of the Acquisition, the Land was suitable for private low-density housing, but development on the Land could not take place immediately for various reasons. With cemetery land, time is needed to find new burial sites and to plan for exhumation and re-development. These are sensitive issues that had to be carefully considered and managed. Then, in January 1994, the Ministry of Environment introduced a requirement for new residential properties to have at least a 50-metre nuisance buffer setback from industrial sites as part of its Code of Practice on Pollution Control. As the Land was located near industrial sites, it was affected by this new requirement which made it very difficult to develop the Land for residential

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47 Tan's 1st Affidavit at [46]–[47] and pp 61–62 and 69–84.

use. In the Master Plan 1998, the Land was re-zoned to "Reserve Site" as the use of the Land was under study. In the Master Plan 2003, part of the Land was re-zoned from "Reserve Site" to "Park" to serve the residents in the area. After the exhumation of the graves were completed in 2009, the park was developed and completed in 2010 – this was also evidenced by various photographs showing the park. The remaining part of the Land zoned "Reserve Site" was re-zoned to "Residential" in the Master Plan 2014 to reflect the new land use intention, and options were being considered to amalgamate it with nearby industrial sites when the industrial uses on those sites were phased out.[48]

62 The court in *Teng Fuh Holdings* ([38] *supra*) (at [39]) stated that in deciding whether the burden of proving bad faith was discharged, mere suspicion was not enough, and the court must consider all the evidence before it, including any explanation from the respondent. Considering the evidence and explanation by Ms Tan, I am not satisfied that there was bad faith on the government's part in the Acquisition or that the power to compulsorily acquire the Land was used for an improper purpose.

63 SLA has explained why it could not develop the Land much earlier, and supported this with contemporaneous materials. Given that the Land was originally cemetery land and there clearly were sensitivities involved, the government would have considered the matter carefully before proceeding to compulsorily acquire the Land for development purposes. That there were sensitivities that had to be carefully managed was evidenced by the *Straits Times* and *Berita Minggu* reports at the material time. SLA had given a credible

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[48] Tan's 1st Affidavit at [48]; Ho Yi-Yin Jomel's 1st affidavit (2 December 2019) at [4]–[5].

explanation as to why it took some time for the graves to be completely exhumed, given that new burial sites had to be located. It is also not disputed that the Ministry of Environment introduced a new requirement for a buffer setback for new residential developments, which thus made it more difficult to develop the Land at the material time. In any event, it was not as if the Land was left completely undeveloped thereafter. Some 2,500 sqm (or about ¼ of the total area) of the Land, then re-zoned "Park", was developed into a park shortly after the exhumation of the graves was completed. All this while, SLA or the government would not have known of Mr Ahmad's complaints regarding Mr Adam's occupation of the Land, given that he first wrote the MP Letter in February 2010, and *did not challenge the Acquisition*. Therefore, it could not be suggested that SLA deliberately took their time, or took steps in the development of the Land to "cover up" any alleged impropriety in relation to the Acquisition.

The provisions of the LAA 1987 and notice requirement

64 Next, Mr Ahmad claimed that the Acquisition was *ultra vires* s 8 of the LAA 1987 and conducted in bad faith or without proper care. The Acquisition was also procedurally improper. Mr Ahmad asserted that no notice was provided to Mr Adam or himself although the government knew and treated Mr Adam as the owner of the House and Plot, and if a reasonable attempt to mark out the Land (pursuant to s 7 of the LAA 1987) had been done, it would have revealed the existence of the House. Mr Ahmad also claimed that he had suffered great prejudice as a result of the Collector's failure to provide notice (see [32] above) and that such failure was a breach of natural justice.

65 There are two specific rules which encapsulate the rules of natural justice: (a) the rule against bias; and (b) the fair hearing rule (see *Yong Vui Kong*

v Attorney-General [2011] 2 SLR 1189 at [88]. Mr Ahmad's contention refers to the latter, *ie,* that he and Mr Adam did not have the opportunity to appear at the Collector's inquiry to make submissions on their entitlement to compensation. As guided by the CA Judgment at [76], whether there is a breach of natural justice depends on whether the Collector had a duty to mark out the Land (including the House) under the LAA 1987 and whether he had fulfilled the notice requirement pursuant to s 8 of the LAA 1987. This would include examining whether the Collector had known or believed Mr Adam was a person interested in the Land at the material time.

66 The relevant provisions of the LAA 1987 are as follows:

> **Power to enter and survey**
>
> **3.**—(1) Whenever it appears … that any land … is likely to be needed for any purpose specified in section 5(1), a notification to that effect shall be published in the *Gazette* … and thereupon any officer … may —
>
> …
>
> (d) set out the boundaries of the land proposed to be taken …;
>
> (e) mark those … boundaries …;
>
> …
>
> **Notification that land is required for specific purposes**
>
> **5.**—(1) Whenever any particular land is needed —
>
> (a) for any public purpose;
>
> …
>
> the President may, by notification published in the *Gazette*, declare the land to be required for the purpose specified in the notification.
>
> (2) Such a notification shall state —
>
> …
>
> (c) if a plan has been made of the land, the place and time where and when the plan may be inspected.

> (3) The notification shall be conclusive evidence that the land is needed for the purpose specified therein as provided in subsection (1).
>
> **Collector to proceed to acquire after notification**
>
> **6.** Upon the publication of a notification under section 5(1) … the Minister or an officer authorised … shall direct the Collector to take proceedings for the acquisition of the land.
>
> **Land to be marked out and measured**
>
> **7.** The Collector shall thereupon cause the land, unless it has been already marked out under section 3, to be marked out and measured, and a plan to be made thereof, if no plan exists.
>
> **Notice to persons interested**
>
> **8.**—(1) The Collector shall then cause notices to be posted at convenient places on or near the land to be taken stating —
>
> (a) that the Government intends to acquire the land; and
>
> (b) that claims to compensation for all interests in the land may be made to him.
>
> (2) The Collector shall also serve notice to the same effect on all persons known or believed to be interested in the land, or to be entitled to act for persons so interested, and residing or having agents authorised to receive service on their behalf within Singapore …
>
> …
>
> [emphasis in original]

Whether the Collector had to mark out and make a plan of the Land under s 7 of the LAA 1987

67 I first examine whether the Collector had to mark out the Land either under s 3 or s 7 of the LAA 1987. Ms Tan attested that before the Acquisition, the Land Office's records already contained a cadastral plan showing the boundaries of the Land and she exhibited a copy of that plan in her affidavit.[49] That being the case (and there being no evidence on the contrary), I find that

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[49] Tan's 1st Affidavit at [51].

there was no duty on the Collector to cause the Land to be marked out and another plan made of it under s 7 of the LAA 1987.

(a) The manner in which s 7 of the LAA 1987 is worded supports the interpretation that the Collector's duty to mark the land *and* to make a plan of it is engaged only "if no plan exists".

(b) The reference to s 3 (in s 7 of the LAA 1987) clarified that the land need not be marked and measured again if this had been done under s 3. Nevertheless, the Collector's duty under s 7 to make a plan was contingent on whether a plan already exists. Although Mr Koh submitted that it behoves the Collector to ensure that the cadastral plan, which was undated, was accurate and up to date,[50] s 7 did not prescribe nor limit when the plan for a land (the subject of an intended acquisition) should have been made. Hence, in my view, there is no need for the Collector to mark the said land again under s 7 of the LAA 1987 if a plan of the land had existed even before the land was to be compulsorily acquired, the land remained the same land, and the land use remained unchanged from what was stated in the plan. Here, there was already a cadastral plan of the Land which showed the Land to be cemetery land. There was also no change in the land boundaries and its use at the time of the intended Acquisition from the cadastral plan.

(c) It should be noted that whilst s 7 referred to s 3 of the LAA 1987, s 3 merely conferred powers on the Controller or authorised officers to do certain things in relation to a land which is likely to be compulsorily acquired. Section 3 did not impose a duty on the Controller to mark the

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50 AFS at [14].

boundaries of a land. The title of the said section and the nature of the acts that may be done under it (*eg,* digging the soil and cutting down crops) made it clear that s 3 conferred powers rather than imposed duties.

(d) I am cognisant that the CA Judgment (at [75]) had stated that the Collector had a duty under s 7 of the LAA 1987 to mark out and measure the land to be acquired. However, there was no evidence that the CA then had the benefit of arguments on the interpretation of s 7 of the LAA 1987 and had been aware that a cadastral plan had been prepared in relation to the Land prior to the Acquisition.

68 Even if the Collector had a duty to mark out the Land under s 7 of the LAA 1987 and to include the House in its marking (as "land" is defined in s 2 to include things attached to the earth or permanently fastened to anything attached to the earth), there was no evidence that he had acted in bad faith in failing to prepare another plan under s 7. The cadastral plan showed the Land to be cemetery land and there had been no change in the land use at the time of the intended Acquisition. The purpose of preparing a plan under s 7 of the LAA 1987, where no plan existed, was to enable the posting of the notice under s 8(1) and the service of notices under s 8(2). The question as to whether Mr Adam was a person known or believed to be interested in the Land under s 8 of the LAA 1987 and whether the requirements in ss 8(1) and 8(2) had been complied with, will be dealt with next.

Section 8(1) LAA 1987 notice

69 I deal first with s 8(1) of the LAA 1987, which required the Collector to cause the requisite notice to be posted "at convenient places on or near the land" to be acquired. I find that the Collector had fulfilled this requirement.

70 The 22 January 1988 Notice was posted on the Land by Mr Halim, though it is unknown precisely where on the Land it was posted (see [4] above). That the notice was posted on the Land is supported by a copy of the same on which there is a stamp bearing Mr Halim's name as the one who posted the notice and on which was written "Posted on site". The Collector had also in 1988 itself attested on affidavit in OS 600 of 1988 (see [5] above) that the Notice was posted on the Land. Mr Koh submitted that there was no evidence that the 22 January 1988 Notice was actually posted on the Land since there was no affidavit evidence from Mr Halim. Mr Ahmad also attested that he did not believe the Notice was posted on the Land because he and his family were residing at the House at the material time and were unaware of the existence of the Notice, and that they "continued to reside in the House undisturbed and oblivious to the Government's purported acquisition of the Land".[51] Mr Ahmad also claimed to have handled all important matters including government letters that were sent to the House, to support his claim that he would have seen the 22 January 1988 Notice if it had indeed been posted on the Land.[52]

71 I preferred the documentary evidence over Mr Ahmad's bare assertion. Mr Ahmad did not produce any independent evidence to challenge the record of the notice. Further, Mr Ahmad's assertion of his residence at the material time was clearly untruthful, given the evidence both before and after OS 881 was filed. The CA in the CA Judgment (at [52]) had *earlier* found that Mr Ahmad had moved out of the House by 1977 and lived elsewhere until around 2009 – Mr Koh admitted before me that Mr Ahmad was living in his own flat

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51 Ahmad's 1st Affidavit at [14]–[15] and [19]; AWS at [94]; AFS at [26(a)].

52 Ahmad's 2nd affidavit dated 27 Sept 2019 ("Ahmad's 2nd Affidavit") at [8]; AFS at [26].

in Ang Mo Kio in 1988 and moved back to the House in 2009.[53] Additionally, HDB had stated that its records showed Mr Ahmad was a lessee of a HDB flat in Ang Mo Kio around March 1986 to December 1992 and May 1993 to December 2003. The Immigration and Checkpoint Authority's records also showed Mr Ahmad had reported his change of address to a HDB flat in Ang Mo Kio from July 1986 to January 2004.[54] In answers to interrogatories filed *in OS 397*, Mr Ahmad stated that he lived in the House from 1950 until 1980 and then from October 2009 onwards.[55] Despite knowing what he had stated in OS 397 and the CA's finding in CA 4/2017, Mr Ahmad continued to maintain the lie that he was residing in the House/Plot in his first affidavit filed for OS 881. It was only when Ms Tan pointed this out that Mr Ahmad then changed his evidence in his second affidavit to claim that he went back to the House at least once a week to visit his father.[56] Additionally, Mr Ahmad claimed that he was handling all important matters including government letters such as property tax letters, utility bills and sewerage works. He was, however, unable to produce a single document from the 1980s (that being the critical period when the 22 January 1988 Notice and even when the September 1988 Notice were posted on the Land) to show for it, even though he could produce documents from *earlier* periods in the 1960s and 1970s.[57] This casts serious doubt on his claim.

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53 18/11/19 NE at p 7; 20/1/20 NE at p 3.

54 Tan's 1st Affidavit at [65] and tabs 80 (p 322) and 82 (p 332).

55 Respondents' Bundle of Documents (Tab 3: Applicant's answers to interrogatories in OS 397 dated 14 January 2016 at p 5

56 Ahmad's 2nd Affidavit at [7].

57 Ahmad's 3rd affidavit dated 2 December 2019 ("Ahmad's 3rd affidavit") at p 8; 27/3/20 NE at p 2.

72 Mr Ahmad seemed to suggest that if a notice had indeed been posted on the Land, he or Mr Adam would have done something about it at the material time (such as to make a claim for compensation). This would not necessarily have been the case. It must be remembered that at that time, Mr Adam did not have legal title to the Plot and also had not made a claim for adverse possession. Moreover, as Ms Tan attested, the statutory compensation for cemetery land then was rather low, assessed at about $0.15 per square foot, which would have amounted to $655 for the Plot.[58]

73 Next, after the Collector had assessed and made an award of compensation on the Land, the September 1988 Notice was posted on the Land by Mr Khosni. Mr Khosni attested in detail that he saw the Structure (which was near a cemetery) and posted the notice on the Structure. He also marked out in his affidavit, the location of the Structure on the plan showing Palm Drive and the Land, which Ms Tan confirmed corresponded to the location of the House on the Land (see [7]–[8] above). I accept that the September 1988 Notice was posted on the House. Again, I am doubtful of Mr Ahmad's assertion that there was no notice of any sort put up on the House at that time,[59] give that he had moved out of the House in 1977 and lived elsewhere until around 2009 (see [71] above). Whilst the September 1988 Notice is not a s 8(1) notice, the point here is that this casts doubt on Mr Ahmad's credibility and his claim that there was no notice posted on the Land or House to bring to his or Mr Adam's attention in 1988 of the Acquisition.

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58 Tan's 1st Affidavit at [65(d)].

59 Ahmad's 2nd Affidavit at [7].

Whether the Collector had known or believed that Mr Adam was a person interested in the Land

74 I then turn to s 8(2) of the LAA 1987 in relation to the Collector's duty to serve a notice of the intended acquisition on "all persons known or believed to be interested in the land". I find that Mr Adam was a person interested in the Land, even if he was not determined to be the owner of the House or Plot, at the material time. The CA in the CA Judgment (at [47]) had found that Mr Adam occupied the House from as early as 1955 until 1997 when he passed away. Mr Adam paid the property taxes levied on the House from 1964 until his demise and paid for the sanitary and drainage system installed for the House in 1974. These payments were not disputed.

75 The crucial issue however is whether the *Collector had known or believed*, at the time of the Acquisition, that Mr Adam was such an interested person. Mr Ahmad asserted that the government recognised that Mr Adam was the registered owner of the House on the basis of the payments made for property tax, the sanitary and drainage system, utility bills and television licence fees. AGC submitted that the Collector did not know or believe that Mr Adam or Mr Ahmad had an interest in the land.[60] Mr Adam was not personally served with a notice of acquisition since he and his family chose not to claim or register any interest in the Land. Mr Ahmad admitted as such in his MP Letter where he stated that he "never wanted to impose any claim on the [Land]".[61]

76 I find that at the time of the Acquisition, the Collector did not know or believe Mr Adam to be a person interested in the Land, and thus did not have to

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60 RWS at [89]–[93].

61 Tan's 1st Affidavit at [56]–[57] and p 161.

serve a notice under s 8(2) of the LAA 1987 on him. Mr Adam never registered any interest in the Land. He could have done so, but chose not to. Mr Adam also did not at the material time make a claim of adverse possession on any part of the Land. The CA in the CA Judgment (at [75]) found that Mr Adam took no steps to perfect his title and that was "the most likely explanation why the Collector did not know or believe that he was a person interested in part of the Land and why no notice of the [A]cquisition was addressed to Mr Adam personally."

77 Next, the payment of property tax did not necessarily make the paying party (Mr Adam) the legal or beneficial owner of the property, as the definition of "owner" under s 2 of the Property Tax Act includes persons who may not be the legal or beneficial owner of the property (*Re Lot 114-69 Mukin XXII, Singapore* [2003] 1 SLR(R) 773 at [80]; *Algemene Bank Nederland NV v Tan Chin Tiong and another* [1985–1986] SLR(R) 1154 at [22]). Likewise that Mr Adam may have paid the utility bills did not make him the "owner" of the Plot or House. In the Parliamentary Debates, it was recorded that at the material time, as far back as 1960, there were an estimated quarter-million people living in slums and another quarter-million in *attap* squatter settlements, which were prone to poor hygiene.[62] For public health and safety, there was a pressing need to provide clean water supplies to "unauthorised attap houses" and hence such "attap house dwellers" with no house numbers were required to apply for house numbers to be given by the Property Tax Division before applying to the Public Utilities Board for water supplies.[63]

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62 Parliamentary Debates on Committee of Supply (5 March 2012) vol 88 at p 1864.

63 Parliamentary Debates (13 March 1973) vol 32 at col 738–746.

78 Mr Tay Ming Wei from the Property Tax Division of IRAS attested that it was the Comptroller of Property Tax ("Comptroller") who was in charge of issuing house numbers in the 1960s until today. Squatters who wished to arrange for water or electricity supplies from the Public Utilities Board would likely have approached the Comptroller for a house number to be issued and thereafter a squatter's house may be assessed for property tax separately; this, however, did not mean that the Comptroller recognised or treated the squatter as the legal owner of the house or the land on which the house stood.[64] The Collector was neither involved in this process nor in the collection of property tax, utility bills, or the installation of the sanitary and drainage system for the House and there was no evidence that the Collector knew that these payments were made. Whilst some other body/department of the government may have known of Mr Adam's existence on the Land, this did not mean that the Collector would also possess such knowledge and thus have known that Mr Adam was a person interested in the Land. In my view, the Collector was entitled to rely on the Registry, which traced the title of the Land to the paper owners.

79 Even though the Collector did not know or believe Mr Adam to be interested in the Land, I consider whether he had a duty to serve the notice of intended acquisition on Mr Adam on the basis that he was nevertheless an occupier of the Land. In my view, the answer is no. The LAA 1987 did not impose this obligation – s 8(2) applied only to a person whom the Collector knows or believes to be interested in the land. This is to be contrasted with the predecessor legislation, namely s 8(3) of the Singapore Land Acquisition Ordinance (Cap 248, 1955 Rev Ed) ("SLAO"), which states that the Collector must serve notice "on the occupier, if any, of such land and on all such persons

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64 Tay's 1st Affidavit at [5].

known or believed to be interested therein". In interpreting s 9(3) of the Indian Land Acquisition Act (which is in *pari materia* with s 8(3) of the SLAO), the Bombay High Court in *Laxmanrao Kristrao Jahagirdar v The Provincial Government of Bombay* (1950) 52 BomLR 316 stated thus:

> [T]he Legislature has made a clear distinction between occupiers of the land and persons who are interested in the land. As far as occupiers are concerned, the Collector must serve a notice upon the occupier. As far as persons interested are concerned, the obligation is cast upon him only if he knows of such persons or believes that there are such persons. With regard to the first class the obligation is absolute; with regard to the second class the obligation is not absolute but is relative and it only arises provided the Collector has knowledge or belief with regard to the existence of the second class of persons. Therefore it is clear that a person who has not been served with a notice under Section 9(3) and who is interested in the land to be acquired can only have a grievance provided he satisfies the Court that the Collector wilfully or fraudulently or perversely omitted to serve the notice contemplated by Section 9(3).

80 When the Singapore Land Acquisition Act 1966 ("LAA 1966") was passed, the requirement to serve specific notice "on the occupier, if any, of such land" was removed. Hence, from that point, there was no longer a requirement to serve a notice on a person who was an "occupier" of a land (unless he is a person whom the Collector knows or believes to be interested in the land). As the Collector did not know or have reason to believe that Mr Adam was a person interested in the Land at the material time, there was no requirement for him to serve Mr Adam with the requisite notice even though Mr Adam may have been an occupier of the House on the Land. Also, there was no evidence that the Collector, in omitting to serve the notice, had done so wilfully or fraudulently, or had acted in bad faith.

81 I should add that Mr Koh sought to argue that in 1964 when the Land Acquisition (Amendment No. 2) Ordinance Bill (Bill 28/1964) ("Bill 28/1964") was introduced to remove the requirement to serve notice on an "occupier" of

the land under s 8, the Explanatory Statement stated that whilst s 8 would be repealed and re-enacted, "there will not be any change in the effect of [this provision]" ("the Relevant Phrase"). Mr Koh argued that this meant that an occupier of the land (such as Mr Adam) would nevertheless have to be served a notice of acquisition consistent with the purport in the SLAO. However, Mr Koh admitted that Bill 28/1964 was allowed to lapse after the respondent's counsel, Mr Khoo, pointed it out.[65] It was eventually replaced with the Land Acquisition Bill (Bill 19/1966) ("Bill 19/1966") that was then passed as the LAA 1966 (see [80] above). Notably in Bill 19/1966, the Relevant Phrase was not included in the Explanatory Statement. Hence, Mr Koh's argument fails. If at all, the omission of the Relevant Phrase from the Explanatory Statement of Bill 19/1966 (which led to the LAA 1966) would suggest otherwise – that Parliament had intended to change the position in the SLAO to no longer require a notice of acquisition to be served on a person who is an "occupier".

Remedies prayed for

82 In short, I am not satisfied that the material before me disclosed an arguable or *prima facie* case of reasonable suspicion in favour of granting the remedies sought. There was no evidence that the 1987 Gazette was issued in bad faith or amounted to the use of power for an improper purpose. There was no duty on the Collector to mark out the Land and have another plan made of it under s 7 of the LAA 1987. The Collector had also fulfilled s 8(1) of the LAA 1987 and did not have to serve a notice on Mr Adam under s 8(2) as the Collector did not know or have reason to believe that Mr Adam was an interested person at the material time. Neither was there evidence that the

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65 18/11/2019 NE at p 12.

Collector had acted in bad faith in omitting to serve Mr Adam a s 8(2) notice. In any event, Mr Ahmad had failed to account for the delay in the Leave Application, and hence failed to cross the threshold requirement under O 53 r 1(6) of the ROC. However, for completeness, I will go on to deal with the remedies prayed for by Mr Ahmad, essentially: (a) to quash the Acquisition; and (b) to quash the 1988 Award and to mandate the Collector to conduct a fresh inquiry into the appropriate compensation to be paid to Mr Ahmad.

Quashing of the Acquisition

83 In any event, I would not have granted an order to quash the Acquisition. Mr Khoo submitted that the purpose of a notice of acquisition under s 8 of the LAA 1987 is to invite claims for compensation to be made to the Collector, and not to invite objections to the compulsory acquisition. In support, Mr Khoo cited Lord Wilberforce's *dictum* in *Robinson & Co Ltd v Collector of Land Revenue* [1979–1980] SLR(R) 483 at [11] (which was accepted by the CA in *Lim Kim Som v Sheriffa Taibah bte Abdul Rahman* [1994] 1 SLR(R) 233 at [44]):

> … Once the machinery for acquisition has started to operate, which it has under s 5, then, subject to the power to withdraw, the owner of the land, who, it is important to observe, has no right to object to the acquisition, has an interest only in compensation …

84 Even if Mr Khoo is correct as to the purpose of s 8 of the LAA 1987, this did not mean that the Collector's actions (or omissions) are not susceptible to review or that an acquisition of land can never be considered as invalid (see *Teng Fuh Holdings* ([38] *supra*) at [29]). In the present case, the Acquisition was for the stated purpose of redeveloping the Land (see [60]–[61] above). Quashing the Acquisition pertaining to the Plot alone would not be an appropriate remedy, considering the very long time lapse from the Acquisition to the Leave Application which resulted in developments to the Land. Further,

Mr Ahmad's main gripe was not that the government had no right to acquire the Land (and he had consistently maintained even at CA 4/2017 that he would not challenge the Acquisition), but rather, that the compensation afforded to him was inadequate (see [32] and [53] above). If a quashing order is made in relation to the Plot and the Plot is returned to Mr Adam's estate, his estate would also obtain an unjustifiable windfall, as the value of the Plot would have appreciated considerably since the Acquisition. The government had exhumed the Land and incurred expenses on the exhumation and re-burial, and on development of the surrounding areas. The Land (other than the part re-zoned as "Park") had also been re-zoned as "Residential" and hence increased in value (see [61] above). Such windfall should not accrue to Mr Adam's estate.

85 In that regard, at the Second Reading of Bill 19/1966 (on 22 June 1966), Mr E W Barker ("Mr Barker") (then Minister for Law and National Development) stressed that the principle underlining the compensation provision is that "Firstly, no landowner should benefit from development which has taken place at public expense and, secondly, that the price paid on acquisition of land of public purposes should not be higher than what the land would have been worth had the Government not carried out development generally in that area". As the High Court stated in *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2006] 3 SLR(R) 507 at [61], the prevention of economic windfalls is one of the key policies underlying the LAA 1987.

Quashing the 1988 Award and mandating the Collector to conduct a fresh inquiry

86 Alternatively, Mr Ahmad sought to quash the 1988 Award and to mandate that the Collector conduct a fresh inquiry in respect of the appropriate

compensation to be paid on the basis of the LAA 1987 and taking into consideration the government's *ex gratia* Top-Up payment policy.

87 In CA 4/2017, the CA opined (at [92]–[93]) that in assessing an appropriate award for Mr Ahmad, the starting point is s 33 of the LAA 1987 with the applicable statutory date of assessment as at 30 November 1973 for the market value and the time value of the award accounted for through an appropriate adjustment or award of interest. The CA also opined (at [94]) that the existing use of the Land was "cemetery" use for the purposes of s 33(5)(*e*) of the LAA 1987. It should also be noted that s 33(5)(*f*) of the LAA 1987 stipulated that where acquired land is used as a burial ground, "no account shall be taken of any potential value of the land for any other more intensive use".

88 On 15 August 2019, AGC wrote to Mr Ahmad to state that SLA and the government confirmed that: (a) the 1988 Award would apply only to the paper owners of the Land and no part of it would be apportioned to Mr Adam's estate; and (b) "a new Collector … will be appointed to inquire into [Mr Adam]'s estate's claim for compensation in respect of the House… and to make a Supplementary Award in accordance with [the LAA 1987] and the [CA Judgment]".[66] Before me, Mr Khoo confirmed that the respondents are prepared to pay compensation to Mr Adam's estate after a fresh inquiry is made before the Collector.[67] Pursuant to AGC's letter of 15 August 2019, Mr Ahmad did not confirm his participation in a fresh inquiry to determine a supplementary award of compensation to him.

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66 Tan's 1st Affidavit at p 459.

67 RWS at [23]; 18/11/19 NE.

89 A person seeking judicial review must exhaust all alternative remedies before invoking the jurisdiction of the court (*Borissik Svetlana v Urban Redevelopment Authority* [2009] 4 SLR(R) 92 ("*Borissik*") at [25]). As a preliminary point, it is doubtful if the 1988 Award can be partially quashed in relation to the Plot alone (as per Mr Ahmad's application), given that the Collector had at the material time made the 1988 Award as a whole for the Land. It is also unclear if the process under the LAA allows the Collector to make an additional assessment for a supplementary award for the same land for a different claimant. In *Novelty Dept Store Pte Ltd v Collector of Land Revenue* [2016] 2 SLR 766 at [43]–[44], the CA opined, in relation to the issuing of a supplementary award under the land acquisition regime, that whilst such practice was not expressly legislated for, there was no reason to doubt the legal status of such awards, and the regularity of such award would not be called into question so long as it did not prejudice the right of any person interested. In the same vein, I would add that the LAA does not prevent the Collector from making a supplementary award on the same land even if it is for a different claimant. If the matter went to the Collector for assessment, any award made by him to Mr Adam's estate would not be called into question as there would be no prejudice suffered by any interested person. The respondents have confirmed that it would permit such an assessment to take place. Mr Khoo also submitted that Mr Ahmad could appeal to the Appeals Board constituted under the LAA, as Mr Adam would be a "person interested" under the LAA. The Appeals Board may grant an extension of time to proceed with the appeal for reasonable cause if there has been no unreasonable delay. Hence Mr Ahmad has not exhausted the remedy available to him.

90 The court will not act in vain (*Thio Keng Poon v Thio Syn Pyn and others and another appeal* [2010] 3 SLR 143 at [76], affirming Lord Wilberforce's

observations in *Malloch v Aberdeen Corp* [1971] 1 WLR 1578 at 1595). Mr Khoo has confirmed that a process is readily available to Mr Ahmad for his claim in compensation to be assessed by the Collector, and Mr Adam's estate would be compensated after that assessment.[68] If Mr Ahmad is not satisfied with the Collector's award, the LAA provides for an avenue of appeal to the Land Appeals Board, and to the CA on a question of law. Mr Koh submitted that mandating the Collector to conduct a fresh inquiry would result in immense time and costs savings, as parties would otherwise have to go through a Collector's assessment, a potential appeal to the Appeals Board, and then to the CA and/or commence judicial review.[69] However, it is unclear how the process proposed by Mr Koh would differ from the process offered by the respondents to Mr Ahmad. Furthermore, the court does not mandate to any public body "how and in what manner they are to perform their duty" (*Borissik* at [21]). The court cannot, at this stage, direct how the Collector is to perform the assessment, although no doubt the Collector would be cognisant of the CA Judgment.

91 Likewise an application for an order to mandate the Collector to calculate the compensation to include an *ex gratia* Top-Up (in addition to any compensation to be assessed on the Plot) is misconceived. Even if the court were to grant an order to quash the 1988 Award pertaining to the Plot and order the Collector to conduct a fresh inquiry on the appropriate compensation, the court should not interfere with the Collector's manner of assessing the quantum of compensation nor dictate the factors that he is to take into account. Mr Koh accepted this and agreed that whilst the amount of compensation on land compulsorily acquired is to be determined by the Collector, any determination

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68 27/3/20 NE at p 3.

69 AFS at [44].

of an *ex gratia* Top-Up is to be determined by the government and is not within the Collector's purview.[70] Indeed, s 33 of the LAA 1987 (and the present LAA) stipulates the matters that the Collector is to consider when assessing the amount of compensation "and no others" – this has been held to mean that all relevant heads of compensation under s 33 are exhaustively codified (*Ng Boo Tan v Collector of Land Revenue* [2002] 2 SLR(R) 633 at [54]–[55], reiterated in the CA Judgment at [93]). Further, there is no legal entitlement to an *ex gratia* payment and the court does not usurp the administrative function of determining an individual's substantive entitlement to such compensation (*Seah Hong Say (trading as Seah Heng Construction Co) v Housing and Development Board* [1992] 3 SLR(R) 497 ("*Seah Hong Say*") at [7]–[8]). Hence, that function of determining any *ex gratia* Top-Up should *first* be left to the relevant body; although "the potential recipient of such payment might have a right to expect that the decision as to his award should be properly made, and may enforce that right by the process of judicial review" (*Seah Hong Say* at [7]). As such, it would be inappropriate for this court to exercise any supervisory powers over a decision-making process (pertaining to the *ex gratia* Top-Up) which has *not* taken place.

92 Mr Koh referred to statements made by Mr Barker in a Budget Statement on 17 March 1983 and in the Second Reading of the Land Acquisition (Amendment) Bill 1987 (Bill 25 of 1987) on 12 January 1988 to support his argument that the Collector should take into account the *ex gratia* Top-Up payment policy in respect of land acquisition.[71] In summary, Mr Barker made statements to the effect that where a person's residential property was

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70 20/1/20 NE at p 6.

71 AWS at [113].

compulsorily acquired under the LAA 1987, the government decided to top up the compensation made under the Act, by an *ex gratia* payment, to enable the person to find a suitable alternative accommodation. Mr Ahmad's reliance on Mr Barker's statements is misplaced, as they were made in the context of the government's compulsory acquisition of *residential* land, and not cemetery land which was what the Land and Plot were zoned for and used as at the time of the Acquisition.[72] Pertinently, Mr Barker stated that such *ex gratia* Top-Up did not form part of the legislation and was done by the government administratively.[73]

93 Given the above, even if Mr Ahmad had succeeded in crossing the threshold requirement under O 53 r 1(6) of the ROC, I would not have granted the orders prayed for.

Conclusion

94 To sum up, Mr Ahmad's application was made out of time and he had failed to account for the delay to the court's satisfaction in filing the Leave Application. Even if he had accounted for the delay to the court's satisfaction, I find that he has not been able to satisfy the threshold standard in granting leave. Further, I would not have granted the remedies sought even if the threshold standard was crossed. The respondents have offered, and continue to offer, to Mr Ahmad the avenue for the Collector to assess the compensation payable to Mr Adam's estate.

95 Accordingly, I dismiss OS 881. I will hear parties on costs.

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72 Tan's 1st Affidavit at [46].

73 Second Reading of the Land Acquisition (Amendment) Bill on 12 January 1988.

Audrey Lim

Judge

Koh Li Qun, Kelvin and Thara Rubini Gopalan (TSMP Law Corporation) for the applicant;
Khoo Boo Jin, Fu Qijing, Teo Meng Hui, Jocelyn and Enoch Wong (Attorney-General's Chambers) for respondents.
