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IS THERE ANY POINTE?

In the matter of No. 2091D Upper Paya Lebar Road Elling Court, Ng Boo Tan v. Collector of Inland Revenue[1]

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Singapore's widely praised system of roads and universally acknowledged excellent public housing did not happen overnight or without some cost.[2] Comprehensive and careful planning together with swift and effective implementation of plans by public officials, and not least, the Land Acquisition Act[3] played a not insignificant role in the making of modern Singapore. Through the application of this piece of legislation the Singapore landowner contributed in no small measure to the Singapore of today.

Compulsory acquisition of private land for public purpose, or "eminent domain" as this is sometimes referred to, is an accepted facet of modern societies, and Singapore is no exception. The history of our land acquisition legislation is summarised in the recent judgment of the majority of the Court of Appeal in *In the matter of No. 2091D Upper Paya Lebar Road Elling Court, Ng Boo Tan v. Collector of Inland Revenue*.[4] Land acquisition has been part of our law since 1857 but so far as concerns compensation that is payable to the landowner whose land has been acquired, the modern law dates back to 1890. The Land Acquisition for Public Purposes Ordinance

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1 [2002] 4 S.L.R. 495 [*Ng Boo Tan*].

2 For a summary of the relevant law, see Tan S.Y., *Principles of Singapore Land Law*, 2nd ed. (Singapore: Butterworths Asia, 2001) chapters 23 and 24; W.J.M. Ricquier, "Public Housing in Singapore" (1987) Urban Law and Policy 313. On compulsory acquisition in Singapore generally see Nat Khublall, *Compulsory Land Acquisition in Singapore and Malaysia* 2nd ed., (Singapore: Butterworths, 1994) and T.T.B. Koh, "The Law of Compulsory Acquisition of Land in Singapore" [1967] 2 M.L.J. ix.

3 Cap. 142, 1985 Rev. Ed. Sing, as amended [*Land Acquisition Act*]. In its present form the Land Acquisition Act was enacted in 1966 and the subsequent amendments merely made amendments to the date for the calculation of market value of the land acquired.

4 *Ng Boo Tan, supra* note 1.

1890 provides for factors which could be considered in arriving at the compensation that is to be paid, market value at the date of declaration, damage for severance, damage for injurious affection, and reasonable expenses for a change of residence or place of business. With the exception of "market value" the other items have substantially remained the same. Additionally the 1890 Ordinance also expressly provides that in computing compensation certain factors shall not be considered. These factors, which include any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired, are those enumerated in section 34 of today's Land Acquisition Act.[5] The 1920 amendment provided for any increase in value to other land of the landowner caused by the underlying scheme for the acquisition to be considered in computing compensation. In 1933 the Ordinance was amended so that apart from the matters set out in the statute as particulars to be considered in assessing compensation payable no other matters shall be taken into consideration. The legislation then remained unchanged until Singapore ceased being a colony of Great Britain.

Prior to the sweeping changes of the 1960s, the land acquisition legislation in Singapore can be said to have provided for adequate compensation to be paid to landowners where their land was compulsorily acquired. For example, the provisions of the then Land Acquisition Ordinance[6] essentially provided for adequate compensation to be paid on the basis of the prevailing market value of the land, and factors germane to the compulsory nature of the acquisition but not affecting the value of the land, such as personal expenses of the land owner necessitated by his having to move his business or residence, were also to be considered.[7] Dating from 1961 the new and young government sought to implement sweeping changes to rights of private landowners to effect social changes in the public interest. First, in 1961, the Land Acquisition (Amendment) Act[8] was passed which provided that where the land compulsorily acquired was devastated by fire, explosion, thunderbolt, earthquake, storm, tempest, flood, or any act of God, the compensation payable shall be based on the market value of the land immediately prior to the devastation, *i.e.* the market of land encumbered with squatters and tenancies protected by the then rent control legislation, and in any event shall not exceed one third of the value of the land in its vacant

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5 This is in effect the *Pointe Gourde* principle that was enunciated subsequently by the Privy Council in *Pointe Gourde Quarrying and Transport Company, Ltd v. Sub-Intendent of Crown Lands* [1947] A.C. 565 [*Pointe Gourde*].

6 Cap. 248, 1955 Rev. Laws of Singapore

7 Sections 26 and 27, *Land Acquisition Ordinance* (1955 Rev. Laws of Singapore).

8 Act No. 22 of 1961.

state, whichever is the lower.[9] This amendment set the tone for subsequent amendments affecting all land acquired. Essentially, relevant existing legislation was amended to reflect the policy that no private landowner should benefit from the any of the efforts in providing for infrastructural changes and improvements.[10] Mr. Lee Kuan Yew stated the policy succinctly when as Prime Minister he said:

> I want to put … certain broad principles which we are trying to apply to a Bill which we shall introduce in this house. The first principle is that nobody should get a windfall because of development at public expense. The second principle is that whenever land is required for a public purpose, the price to be paid for that land should not be higher than what it would have been worth had the Government not contemplated development generally in that area.[11]

The Land Acquisition (Amendment No. 2) Bill 1964, which became the Land Acquisition Act 1966 after Singapore gained independence, introduced the method of "pegged" land values as the basis of compensation. When computing compensation payable the land should be valued at the value five years before the declaration of acquisition.[12] This was another manifestation of the then policy behind the slew of amending legislation in the context of land use. In the words of the then Prime Minister Mr Lee Kuan Yew, "[t]he object of these amendments is to ensure, albeit imperfectly, that the increase in value of land, because of the increase in population and in development, should not lead to unjust or windfall gains by private

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9 This amendment was prompted by the Bukit Ho Swee fire which swept through a huge squatter area rendering hundreds homeless and a potential windfall for the owners of the land affected. It is now reflected in *Land Acquisition Act*, *supra* note 3, section 33(2) and (3)(a), as amended.

10 Amendments were made to three pieces of legislation, *viz.* the *Planning Ordinance*, the *Foreshores Ordinance* and the *Land Acquisition Ordinance*. See the speech of the then Prime Minister Mr. Lee Kuan Yew when moving the second reading of the *Foreshores (Amendment) Bill* in 1964–65, Official Report Legislative Assembly Debates Coll. 33. The *Foreshores Amendment Act 2* of 1964 enacted the current section 7 of the *Foreshores Act* (Cap. 113, 1985 Rev. Ed. Sing.), which provides that no compensation shall be paid "in respect of any lands or of any interest therein which may be injuriously affected whether on account of loss of sea frontage or for any other reason by the execution of the works" of reclaiming the foreshore. Another example is the *Planning (Amendment) Act* (5 of 1964) which introduced the development charge. See speech by Mr Lim Kim San, the then Minister for National Development, when moving the second reading of the *Planning Amendment) Bill*. 1964–65 Vol. 23 Official Report Legislative Assembly Debates Coll. 146.

11 Vol. 22 1963 Official Report Legislative Assembly Debates Coll. 652–3.

12 Under the *Constitution of the Federation of Malaysia*, Article 13 provided that "adequate compensation" should be paid for land that is compulsorily acquired.

landowners and speculators."[13] Later the market value was pegged as at 30 November 1973 or at the date of notification in the gazette, whichever was the lower. Private landowners were not to be allowed to take advantage of increases to the value of their land caused by the improvement of infrastructure facilities, where their interest came into conflict with that of the public in general the law slanted in no uncertain terms in favour of the public interest.

The relaxation of the government policy started with the grant of *ex gratia* payments when it was thought that the pegged value was too far removed from reality and caused hardship. This remained until 1988 when the peg began to be gradually moved by a series of amendments to the Act.[14] The latest of these is the Land Acquisition (Amendment) Act 1995 which sets the compensation payable at the market prevailing at 1 January 1995 in respect of land acquired on or after 27 September 1995. The peg currently remains as at 1 January 1995 in respect of land acquired on or after 27 September 1995.

This brief foray into the past is intended to place in historical perspective the provisions in the current Land Acquisition Act on the quantum of compensation that is payable to a landowner when his land is compulsorily acquired. On land being compulsorily acquired under the Land Acquisition Act, the payment of compensation is assumed. The basis is the "market value"—what a willing purchaser would pay to a willing vendor[15]—as at given dates. In the assessment of the relevant "market value" certain matters, such as the increase to the value caused by the underlying scheme, are to be excluded. Moreover, the compensation is to include certain kinds of losses caused by the acquisition. Further, where the land acquired has been devastated by fire or flood the market value should be of the land in its encumbered state. The overall result is that while the affected landowner is given compensation, the compensation is neither fair nor adequate.[16] The overall needs of society then—more roads, drains, schools, housing—justified the sacrifice by the relatively better off land owners. Arguably, there was then a need for severe laws which clearly preferred the public interest at the expense of the individual land owners.[17] Today, however, the scene

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[13] Speech of the then Prime Minister Mr. Lee Kuan Yew when moving the second reading of the *Foreshores (Amendment) Bill* in 1964-65 Official Reports Legislative Assembly Debates Coll. 33. See *supra* note 11.

[14] *Land Acquisition (Amendment) Act* (No. 2 of 1988), (No. 9 of 1993) and (No. 38 of 1995).

[15] *Vyrichela narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam* [1939] A.C. 302 at 310.

[16] *Cf. e.g.* the position under *Crown Lands Resumption Ordinance*, or the position in England under the respective land acquisition statutes. See *Director of Buildings and Lands v. Shun Fung Ironworks Ltd* [1995] 2 A.C. 111 at paras. 12 and 13.

[17] I think that even those among the increasing number who hold the view that private ownership of land is an obligation rather than a right would concede that sections 33 and 34 of the *Land Acquisition Act*, *supra* note 3, are on the harsh side.

is quite different. It is well accepted that society's basic needs are more than adequately catered for. Though the State must still have the right to compulsorily acquire land in private ownership where there is such a need, the need is less urgent.[18] So the time has come for a rethink of the basis of compensation for land compulsorily acquired.[19] This has become more necessary since the Court of Appeal's decision in *In the matter of No 2091D Upper Paya Lebar Road Elling Court, Ng Boo Tan v. Collector of Inland Revenue*.[20]

In this case, Ng Boo Tan (NBT) had, in 1981, purchased an apartment in a development comprising two blocks for S$173,000. From 1983 the road line plans drawn by the authorities progressively adversely affected the development. From 1995 it was known publicly that the updated road line would cut through the block in which NBT's flat was situated. Finally, in December 1998, NBT's flat was compulsorily acquired under section 5 of the Land Acquisition Act. Since the land was acquired in December 1998, on the facts, the market value for the land as provided in section 33(1)(a)(i)(C) and (iii) should either be that as on 1 January 1995 or at the date of the publication of the declaration in December 1998, whichever was lower. It was common ground that the market value as at December 1998 was the lower and on this basis NBT was awarded S$285,000 as compensation. But she was dissatisfied with the quantum awarded and appealed against the award on the ground that the market value of her flat was depressed by the fact that the road line adversely affecting her flat had been in the public domain since 1983. In short, her argument was that the Collector had wrongly taken into consideration the underlying scheme which caused the compulsory acquisition of her flat, and in so doing he had ignored the common law *Pointe Gourde* principle in reverse. Accordingly, whether the reverse *Pointe Gourde* principle applied under the Land Acquisition Act was fully argued before the Court of Appeal in the instant case and the Court held in a majority decision that the provisions of the *Land Acquisition Act* did not allow the principle to be applied.[21]

The *Pointe Gourde* principle is one of common law laid down in *Pointe Gourde Quarrying and Transport Co v. Sub-Intendent of Crown Lands*.[22] In that case, the House of Lords in the context of the English land acquisition legislation held that compensation for land compulsorily acquired cannot include the *increase* in value arising entirely from the scheme underlying the acquisition. This positive *Pointe Gourde* principle is provided for in

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[18] Recently, the need essentially was for the mass rapid transport system.

[19] See Economic Review Committee Report 2002/3.

[20] *Ng Boo Tan*, *supra* note 1.

[21] This itself is an interesting point to note as dissenting judgments are a rare event in the Court of Appeal.

[22] *Pointe Gourde*, *supra* note 6.

section 34(e) Land Acquisition Act.[23] The principle in reverse, *viz.* that in calculating the compensation to be awarded any decrease in the value of the land acquired caused by the scheme underlying the acquisition should be similarly ignored, has been recognised and applied in many cases in the Commonwealth. It was first applied in an Indian decision *Muhammad Ismail v. Secretary of State*.[24] More recently, in the Privy Council decision in an appeal from the Supreme Court of New South Wales, *Melwood Units v. Comr of Main Roads*,[25] the *Pointe Gourde* principle in reverse was firmly established as a principle of common law. "In their Lordships' opinion, it is a part of the common law deriving as a matter of principle from the nature of compensation for resumption or compulsory acquisition, that neither relevantly attributable appreciation nor depreciation in value is to be regarded in the assessment of land compensation."[26] The Court of Appeal in the instant case acknowledged the existence of the *Pointe Gourde* principle both positive and in reverse as a principle of common law. The Court also agreed that as such it would apply where it is not inconsistent with the governing legislation.[27] The only issue before the Court was whether the provisions of the Land Acquisition Act permitted the application of the *Point Gourde* principle in reverse.

Despite the many acquisitions under the Land Acquisition Act, the "market value" of the lands acquired has been decided without this issue being brought before the courts although in *Chew Ming Teck v. Collector of Land Revenue*[28] the Collector of Land Revenue agreed with the appellant's argument that neither any increase nor decrease in the market value due to the acquisition should be taken into account. Chan Sek Keong J., as he then was, did appear to have accepted the application of the *Pointe Gourde* principle in both positive and reverse forms. In any event this is weak authority as the issue was not fully argued in court.

As stated earlier, while the positive version of the *Pointe Gourde* principle is enacted in section 34(e), there is no mention of the principle in reverse in the Land Acquisition Act. All the members of the Court of Appeal were agreed that the mere fact that the principle in reverse was not mentioned, while there was express inclusion of the positive version of the principle, does not in itself mean that the principle in reverse is excluded.[29] The

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[23] It was present in the *Land Acquisition for Public Purposes Ordinance 1890* so that it predates *Pointe Gourde*, which was only decided in 1947.

[24] A.I.R. 1936 Lahore 599.

[25] [1978] 3 W.L.R. 520.

[26] *Melwood Units Pty Ltd v. Commissioner of Main Roads* [1978] 3 W.L.R. 520 *per* Lord Russell at 525.

[27] *Ng Boo Tan*, *supra* note 1 at 509, para. 45 and at 515 para. 1 and 15.

[28] [1988] S.L.R. 118.

[29] *Ng Boo Tan*, *supra* note 1 at 510, para. 48.

majority of the Court of Appeal then proceeded to determine the issue at hand by applying the rule of statutory construction that a principle of common law will apply where it is not inconsistent with the provisions of a statute on the subject. Using this approach, they found that the *Pointe Gourde* principle in reverse was inconsistent with section 33(1)(b) and (5)(e) Land Acquisition Act. They also drew attention to section 33(1) which stated categorically that when assessing compensation only the matters set out in section 33 should be considered "and no others". Here Chao J.A. parted company with his brethren and delivered a dissenting judgment.

Section 33 of the Land Acquisition Act sets out the factors that should be taken into consideration when assessing compensation for land acquired, while section 34 lists the factors that should not be taken into consideration. The majority of the Court of Appeal found the *Pointe Gourde* principle in reverse to be inconsistent with section 33(1)(b) and section 33(5)(e).

Section 33(1)(b) provides that the Collector should consider "any increase in value to other land" owned by the owner of the land acquired by reason of the use to which the land acquired will be put. In other words, any such increase to the other land owned should be set off against the amount to be awarded so that the owner of the land acquired does not benefit from the acquisition at all. The policy advanced by the government of the day was clearly that the owner of land acquired should not benefit from the improvements that have been made to the area in which the acquired land is situated generally. Neither should he reap a windfall from the acquisition by pointing to the increase in value occasioned by the use to which the land acquired would be put as well as from any improvements that the government has made to the area in which the acquired land is situated.[30] The "set off" of any profit from adjoining lands that also belong to him, while in keeping with the prevailing sentiment of not permitting the land owner from reaping an "undeserved" profit from improvements made to the area, as also expressed in section 33(5) (a)–(e), does not necessarily lead to the position that the owner must suffer any depreciation occasioned by the scheme underlying the acquisition. Chao J.A. did not regard section 33(1)(b) as showing any inconsistency with the application of the *Point Gourde* principle in reverse. With respect, it is difficult not to agree with this view.

Section 33(5) sets out the factors that should be discounted when assessing the "market value" at the relevant date. Section 33(5)(e) which the majority of the Court of Appeal found to be inconsistent with the application of the *Pointe Gourde* principle in reverse simply provides that the market value of the land acquired should be based on the existing use value or the use of the land for the purpose designated in the Development Baseline,

[30] See speech by then Minister for Law, Mr. E.W. Barker in Vol. 25 Parliamentary Debates Coll. 133. See also section 33(5)(a)–(e).

whichever is the lower. No account should be taken of any potential use value but account should be taken of any density or zoning restrictions. As stated above, this subsection together with subsection (1)(b) clearly seeks to deny to the owner of the land acquired any increase to the land that may be caused by the underlying scheme or improvements that have been made to the area or any potential profit that may be caused by the change in planning and zoning laws. This was the clear policy of the Legislature.[31] While the policy was and is to prevent private landowners from reaping a windfall, the converse that he should suffer a real loss for owning the land acquired need not follow. A policy against the reaping of windfalls at the expense of the public does not necessarily lead to the position that the owner should suffer any decrease to the value of his land occasioned by the underlying scheme. It is submitted that as a matter of statutory construction there is nothing expressed in the Land Acquisition Act which states that the landowner should be disadvantaged by the underlying scheme, which prohibits the application of the common law *Pointe Gourde* principle in reverse. Neither is such incompatibility necessarily implied or inferable. Such was the view supported by Chao J.A. with which this writer respectfully agrees.

The majority judgment also referred to section 33(1) which in their view clinched the argument against the applicability of the *Pointe Gourde* principle in reverse. Section 33(1) states categorically: "In determining the amount of compensation to be awarded … the Board shall … take into consideration the following matters *and no others* [my emphasis]." The majority judgment held that the words "and no others" forbade the inclusion of any matter other than those set out in the subsection (1); consequently the *Pointe Gourde* principle in reverse being not provided for expressly in the subsection cannot be considered.[32] These words were added in 1932 to the then Land Acquisition Ordinance for the reason of limiting the heads of claims that might be proffered by dispossessed owners which could otherwise "encourage specious claims holding up settlement, and … delay the occupation of land by the Government and its furtherance of desired works".[33]

The majority judgment dismissed arguments put forward by NBT's counsel that despite these words of exclusion the *Pointe Gourde* principle in reverse was still applicable. The first of these was that not to apply the reverse *Pointe Gourde* principle would lead to the "absurd" result that the government could benefit from the depressed value of the property by announcing the underlying scheme or issuing the notification of acquisition. The majority judgment rejected this argument and went on to say robustly that, far

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31 See discussion above.

32 *Ng Boo Tan*, *supra* note 1 at 512, para. ss 54 and 55 and at 514, para. 61.

33 See 1932 S.S. Gov. Gaz. Supp. at 7.

from resulting in an absurd situation, the non-application of the reverse *Pointe Gourde* principle was in keeping with the overall policy of the legislation that no private landowner should benefit from the underlying scheme or general improvements to the surrounding land. Chao J.A. on the other hand took another view when referring to legislative policy. He held that while there is no doubt that the policy was to deny the land owner a windfall, there was nothing expressly said in Parliament to the effect that the owner was to be financially punished by the acquisition.[34] While the majority of the Court of Appeal is correct in referring to legislative policy in the construction of the statute, it is submitted that Chao J.A.'s less robust and more circumscribed view of the government policy is the correct one. The express provisions of sections 33 and 34 Land Acquisition Act and the relevant speeches in Parliament do not advocate that the landowner has to suffer more than a denial of any profit which he himself did not cause.

In rejecting counsel's argument for the application of the *Pointe Gourde* principle in reverse, the majority of the Court of Appeal applied the purposive method of statutory interpretation. They held that to allow the inclusion of the principle in the face of the words "and no others" would be to allow uncertainty to creep into the matter of assessment of compensation when the objective of the inclusion of those words was to prevent "specious claims that would hold up the process of land acquisition and redevelopment work".[35]

The view taken here is that it is possible for the common law *Point Gourde* principle in reverse to apply. The words "and no others" refer to "matters" that may be taken into consideration when assessing compensation. Market value at the relevant dates is one of the matters to be considered. The others are (i) any increase in the value of other land owned by the land owner whose land has been acquired,[36] (ii) damage that might be sustained due to the acquisition resulting in severance of the landowner's lands or in any other way,[37] and (iii) any expenses that might be incurred by the landowner that the acquisition may have caused such as removal of business or residence.[38] The words "and no others" thus would prohibit the landowner from claiming, for example, inconvenience and sentimental attachment to the land acquired or indeed any other matter which an ingenious and creative landowner might think up. The heads of claim are clearly provided for and by the words "and no others" are limited to those expressly set out. As Chao J.A. stated, the *Pointe Gourde* principle in reverse is not a separate head of claim but rather it is a common law principle which applies when assessing what is the "market

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34 *Ng Boo Tan*, *supra* note 1 at 520, para. 22.
35 *Ibid.* at 514, para. 61 and at 511, para. 52.
36 *Land Acquisition Act*, *supra* note 3, section 33(1)(b).
37 *Ibid.* section 33(1)(c) and (d).
38 *Ibid.* section 33(1)e) and (f).

value" of the land.[39] Being the law it would apply to all cases so that there is no additional uncertainty in that it is applied in one case and not in another. Once it is clearly decided that it is part of our law, the experts can then assess the relevant "market value" of any land acquired accordingly. The argument as to possible delay in acquisition proceedings if disputes arose as to compensation is not entirely correct as the vesting of the land in the State can proceed while the compensation awarded is being appealed.[40] In any event if the words "and no others" in section 33(1) were to be construed as being absolutely exhaustive as to what can be considered, then can it not also be argued that the decrease in value caused by the underlying scheme should also be not considered as it is not set out in section 33 as a factor to be considered?

The stance taken by the majority judgment of the Court of Appeal taken broadly is that the Land Acquisition Act provisions on compensation are intended to be complete in themselves as it is clear from the debates in Parliament that the policy is to strike our own approach to compensation. The whole subject of compensation that is payable on compulsory acquisition of land has been codified, as it were; consequently there is no room for the common law to apply.[41]

It is relevant at this juncture to review the policy behind the statute which was summed up by the then Minister for Law Mr. E.W. Barker as follows:

> … [T]he 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 the development generally in the area …[42]

Undoubtedly, a denial of actual profits due to infrastructure improvements in the surrounding area and potential profits due to change of use, matters which are otherwise relevant is assessing the market value in a voluntary sale, is hard on the landowner.[43] Nevertheless, while the compensation is to be shorn of all profit factors the landowner is still to be compensated for

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[39] *Ng Boo Tan*, *supra* note 1 at 517, para. 9. See also *Waters v. Welsh Development Authority* [2002] R.V.R. at para. 49 *per* Carnath L.J.

[40] Sections 10, 11, 16 and 17 *Land Acquisition Act*, *supra* note 3.

[41] *Land Acquisition Act*, *supra* note 3. Indeed, the fact that section 34(e) predates *Pointe Gourde* may also support the argument that it cannot therefore be an incorporation of the common law principle.

[42] 1966 Vol. 25 Official Report Parliamentary Debates Coll. 133.

[43] When the *Land Acquisition Amendment Bill* was introduced, Singapore was still part of Malaysia and, under Article 13 of the then Malaysian Constitution, when the State compulsorily acquired land the land owner was entitled to "adequate compensation". However,

actual losses suffered.[44] Even if the Legislature intended the compensation provisions in the Land Acquisition Act as an exhaustive code on the subject, the policy of the Act as expressly articulated in Parliament at the time when the Bill was debated was emphatically to deny the private landowner any financial advantage from expenditure of public money on infrastructure and from the changes of planning and zoning laws when computing the compensation that is to be paid when his land is compulsorily acquired.[45] This policy of denying windfalls to the land owner does not necessarily include that of further punishing the land owner by basing the market value of the land acquired with the underlying scheme of the acquisition factored in. As a principle of fairness, where the increase is not to be taken into consideration, the decrease should also be discounted, *viz.* the objective for the acquisition should not be considered whether it be to increase or decrease the market value. It is argued that, notwithstanding that the compensation provisions of the Land Acquisition Act may be intended to codify the subject, there is still scope for the operation of the *Point Gourde* principle in reverse simply as a principle of fairness, the positive aspect of which has been incorporated in section 34(e).[46]

At the time when the Land Acquisition Act was amended in 1966, Singapore's development was at a stage when such a pro-public social stance was understandable. Thirty years on and in a different social milieu, the provisions still stand albeit the date for basing the market value has been progressively brought forward so that the market value might be more "realistic". It is submitted that both on technical as well as on policy reasons the dissenting judgment of Chao J.A. is extremely persuasive. The majority of the Court of Appeal it would seem has been *mainly* affected by the three words "and no others" in section 33(1) which to them indicate that the intention of the legislature was to have regard only to the matters as set out exhaustively in the provisions of the Act when assessing compensation as to construe otherwise would be to allow "specious claims holding up settlement", and generally to delay the whole acquisition proceedings.[47] If this reasoning were applied as the Court of Appeal has ruled then there is no scope for the decrease in market value to be considered since it is not within the list of factors set out in section 33. But even in circumstances

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when Singapore became a Republic and had its own Constitution, the provision for "adequate compensation" was omitted, thus rendering it easier for the enactment of the *Land Acquisition Act 1966*.

44 See *Land Acquisition Act*, *supra* note 3, section 33 (1)(c)–(f).

45 See discussion above.

46 See *Melwood Units Pty Ltd v. Commissioner of Main Roads* [1978] 3 W.L.R. 520 *per* Lord Russell at 525.

47 *Ng Boo Tan*, *supra* note 1 at 511, para. 52, quoting from the speech of Mr. W.S. Ebden when debating the *Land Acquisition (Amendment) Bill 1932* when the words "and no others" were added to the then provision: (1932) S.S. Gaz. Supp. at 7.

applicable when the legislation was enacted, it was neither articulated in Parliament nor reflected in the express provisions of the Land Acquisition Act itself that the private landowner should be denied being paid the market value of his land had the land not been subjected to the scheme underlying the acquisition. Now when the public's needs are arguably less acute, the majority decision in *Ng Boo Tan* has made the lot of the land owner whose land has been acquired even more dire. The Court of Appeal has taken the view that a change in policy should be reviewed by the Legislature.[48] With respect, this is correct but nevertheless it is submitted that to allow for the application of the negative *Pointe Gourde* principle does not so much require a change of policy, as a manoeuvring within the expressed provisions of the Land Acquisition Act. Since the legislation has expressly incorporated the positive *Pointe Gourde* principle that any increase to the value of the land should be ignored when assessing the market value, without expressly mentioning the principle in reverse, both on technical as well as on grounds of fairness, the reverse aspect of the principle, *viz.* that any decrease in value occasioned by the underlying scheme is not to be taken into account, should also be applicable. In view of the known efficiency and foresight of the planning authorities in Singapore, after the decision of the Court of Appeal in *Ng Boo Tan*, all landowners in Singapore await the response of the legislature.

[48] *Ng Boo Tan*, *supra* note 1 at 513, para. 59. See also *Director of Buildings and Lands v. Shun Fung Ironworks Ltd* [1995] 2 A.C., at para. 56, *per* Carnath L.J.