

10/80

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

NO. 2 OF 1978

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

In the Matter of the Land Acquisition Act
(Cap. 272)

B E T W E E N :

- 1. ROBINSON AND COMPANY LIMITED
- 2. ROBINSON AND COMPANY (SINGAPORE)
PTE. LTD. Appellants

- and -

COLLECTOR OF LAND REVENUE,
SINGAPORE Respondent

AND BETWEEN :

COLLECTOR OF LAND REVENUE,
SINGAPORE Appellant

- and -

- 1. ROBINSON AND COMPANY LIMITED
- 2. ROBINSON AND COMPANY (SINGAPORE)
PTE. LTD. Respondents

By Cross-Appeal

CASE FOR THE APPELLANTS

ROBINSON AND COMPANY LIMITED and
ROBINSON AND COMPANY (SINGAPORE)
PTE. LTD.

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Robinson and Company Limited and
Robinson and Company (Singapore) Pte. Ltd.

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30 1. This is an Appeal from the Judgment of
the Court of Appeal of Singapore (Wee Chong Jin,
C.J., F.A. Chua, J. and D.C. D'Cotta, J.) dated
29th September, 1977 giving an opinion on 3
questions raised by way of a Case Stated under

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pp.92-108

pp. 1 - 7

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Section 30 of the Land Acquisition Act (Cap.272) (hereinafter called "the Act") by the Appeals Board constituted under Section 19(1) of the Act.

- p.2 1.24 2. The Case Stated arose out of a compulsory acquisition initiated by the Collector of Land Revenue, Singapore (hereinafter called "the Collector") of the land marked on the Government Resurvey Map as Lot 124 of Town Sub division I situate at Raffles Place, Singapore and having an area of 24,123 sq.ft. (hereinafter called "the subject land"). The subject land was originally the site of a three-storey building with a basement floor and the whole building was occupied by Robinson & Company (Singapore) Pte. Limited, the Second Appellant above named. The building was completely destroyed by fire on 21st November, 1972. 10
- pp.20-28 3. At the date of the fire the subject land was held under a lease for a term of 999 years commencing from the 24th April, 1826 by the Agent of the Commission for the Administration of the Estate of the Portuguese Missions in China at Singapore (hereinafter called "the Portuguese Missions"). It was also the subject of a lease dated 28th April, 1969 from the Portuguese Missions to Robinson & Company Limited, the First Appellant above named for a term of 27 years commencing from 1st July, 1963 and expiring on 30th June, 1990. The subject land was in turn sub-leased in its entirety to its wholly-owned subsidiary the Second Appellant by an Underlease dated 4th November, 1969 for the unexpired residue of the term of 27 years, less 1 day, commencing from 1st July, 1965 and expiring on 29th June 1990. No other person had any interest in or occupied any part of the subject land at all material time. 20 30
- p.41 4. On 16th January, 1973 the President of the Republic of Singapore made a declaration under Section 5 of the Act declaring that the subject land was needed for public purposes. On 17th January, 1973 the declaration was published in the Government Gazette of Singapore. 40
- pp.43-44 5. On 7th February, 1973 the Collector of Land Revenue pursuant to Section 8 of the Act issued and served notices on the Portuguese Missions and the Appellants respectively giving

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them "notice that the Government intends to acquire" the subject land and requiring them to appear at the office of the Collector of Land Revenue on 7th March, 1973 to state, inter alia, the nature of their interest in the subject land and the amount and particulars of their claims to compensation for their respective interests.

- 10 6. The Portuguese Missions claimed a sum of ₹8,440,000/- as compensation for their interest in the subject land and the Appellants jointly claimed a sum of ₹7,522,684/- as compensation for their joint interest in the subject land. In addition, the Second Appellant claimed a sum of ₹7,522,410/- for loss of earnings. p.14 11.21-26
p.17 11.32-37
p.17 1.38 -
p.18 1.1
- 20 7. On 5th September, 1974 the Collector took possession of the subject land. The Collector on 16th July, 1976 pursuant to Section 10 of the Act made an award. (Prior to that date an earlier award was made on 28th June, 1974 which was defective in that the Collector did not make any apportionment between the Portuguese Missions and the Appellants above named). The Collector awarded a sum of ₹5,628,700/- as compensation for the subject land and apportioned it as to ₹3,121,114/- thereof to the Portuguese Missions and ₹2,507,586/- thereof to the Appellants jointly. The Collector totally disallowed the claim for loss of earnings by the Second Appellant. pp.57-58
pp.7-8
p.77 11.26-30
p.8 11.1-8
p.8 11.9-14
- 30 8. The Portuguese Missions and the Appellants appealed to the Appeals Board and the appeal was heard on 11th February, 1977. The questions in issue before the Board were: pp.9-13
- 40 (a) In the Collector's ground of award he attributed to the subject land a vacant land value of ₹700/- per sq. ft. or a total sum of ₹16,886,100/-. This amount was not in dispute. In making his award however the Collector applied the first and third provisos to Section 33(1) of the Act (before the amendment of Section 33(1) by the Land Acquisition (Amendment) Act, 1973) and awarded one-third of the vacant land value. This issue was in dispute in principle. The apportionment of the award was not in dispute. pp.83-86
p.85 11.17-18
- (b) The Collector made no award at all in respect of, or alternatively failed to

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take account in making his award of the claim by the Second Appellant under Section 33(1)(d) of the Act as in force at the relevant time, namely, the claim for loss of actual earnings.

9. The said two issues raised questions of law relating to the construction and application of the provisions of Section 33 of the Act and the Board accordingly without proceeding to determination of the appeal resolved to state a case on the questions of law involved for the opinion of the Court of Appeal under Section 30 of the Act. The questions of law as set out in the Case Stated are as follows:

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p.6 11.18-
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(a) whether there has been in the present case "an acquisition for any purpose specified in sub-section (1) of Section 5 of the Act" of the subject land within a period of six months of the land being devastated or affected directly or indirectly by fire;

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p.6 11.25-
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(b) if, which is not admitted, the acquisition is held to have taken place within the six months' period contemplated by the Act how is the Board to interpret the requirement that it shall "consider the market value of the land immediately before it was devastated or affected as aforesaid, having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters but without taking into account the value of any buildings or structures, permanent or otherwise on the land at the material time" in the context of the facts of the present case;

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p.6 1.43 to
p.7 1.6

(c) how is the Board to interpret Section 33 (1)(d) (before its amendment by the Land Acquisition (Amendment) Act 1973) with particular reference as to whether in determining the amount of compensation the actual loss of earnings of the Second Appellant ought to be taken into consideration in the context of the facts of the present case.

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10. The Case Stated came on for hearing before the Court of Appeal (Wee Chong Jin, C.J., F.A. Chua, J. and D.C. D'Cotta, J.) on 19th and 20th

May, 1977 and Judgment of the Court was delivered on 29th September, 1977. In the Judgment the Court dealt with the three questions set out in the Case Stated as follows:-

pp.92-108

p.102 11.1-26

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(a) On the first question the Court is of the opinion that the words "in the case of an acquisition" appearing in the first proviso to Section 33(1) of the Act indicate that the legislature was referring to the land which is being acquired and not to the land which is being acquired and of which possession has been taken by the Collector or to land which has vested in the State under Section 18 of the Act. Accordingly, the Court is of the opinion that on a true construction the first proviso to Section 33(1) means that where the land has been devastated by fire or by any Act of God and that land is being acquired for the purpose described in Section 5(1) within a period of 6 months after such devastation, the Board (and the Collector) in determining the amount of the compensation to be awarded must not take into consideration the market value of that land at the date of the publication of the notification under Section 5(1) but must instead take into consideration the market value of the land immediately before it was so devastated.

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(b) On the second question the opinion of the Court is that the word "encumbrances" in the first proviso to Section 33(1) includes leases and that accordingly as the subject land was subject to a lease for a term of 999 years from April, 1826 in favour of the Portuguese Missions and a sub-lease by the Portuguese Missions to the First Appellant for a term of 27 years expiring 30th June, 1990 and was further subject to a sub-sub-lease by the First Appellant to the Second Appellant commencing on 1st July, 1963 for the unexpired residue of its own terms for 27 years less one day, the Court is of the opinion that the Board (and the Collector) in the context of the facts of the present case must consider the market value of the subject land immediately before its devastation by fire on the basis that it could not have been

p.105 1.7 to
p. 107 1.15

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conveyed with vacant possession as it was subject to the leases described above. The Court then further considered this second question on the assumption that the term "encumbrances" does not include the leases and expressed the opinion that the words in the proviso, namely: "having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters" mean by necessary implication that the proviso is applicable only if in fact at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters. The Court held that it could not have been intended by the legislature that the land compulsorily acquired, which land is not subject to any encumbrance, tenancy, occupation by squatters, should be given a market value on a statutory presumption that it was so subject.

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p.107 l.16 to
p.108 l.32

- (c) On the third question the Court expressed the opinion that the actual earnings in Section 33(1)(d) must in the context mean provable earnings (including future earnings) based on actualities in contrast to the speculative earnings.

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11. The Appellants appeal against that part of the Judgment of the Court of Appeal as decides that:

- (a) There has been in the present case an acquisition for the purpose specified in sub-section (1) of Section 5 of the Land Acquisition Act of the subject land within a period of six months of the subject land being devastated or affected directly or indirectly by fire.
- (b) The Appeals Board (and the Collector) in the context of the facts of the present case must consider the market value of the subject land immediately before its devastation by fire on the basis that it could not have been conveyed with vacant possession as it was subject to leases in favour of the Appellants.

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12. The Respondent cross-appeals against that part of the Judgment of the Court of Appeal as decides that -

10 (a) In considering the market value of the subject land on the basis that the word "encumbrance" does not include a lease, the words of the proviso "having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters" must by necessary implication mean that the proviso is applicable only if in fact at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies, or occupations by squatters and further that the words of the proviso being plainly ambiguous it would be wrong in accordance with the accepted canon of construction to give them a meaning which penalises the subject and leads to an irrational result.

20 (b) The words "actual earnings" in Section 33(1)(d) of the Act must in the context mean provable earnings based on actualities in contrast to speculative earnings and accordingly in the context of the facts of the present case the Second Appellant above named is entitled to have its claim for compensation considered and to payment of the amount of compensation (if any).

p.114 11.37-46

30 13. The Portuguese Missions did not appeal against any part of the Judgment of the Court of Appeal and have no interest in this Appeal.

14. The issues in this Appeal are as follows:

40 (a) The First Issue: Whether there has been in the present case an acquisition for the purpose specified in sub-section (1) of Section 5 of the Land Acquisition Act of the subject land within a period of six months of the land being devastated or affected directly or indirectly by fire.

(b) The Second Issue: Whether the Appeals

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Board (and the Collector) in the context of the facts of the present case must consider the market value of the subject land immediately before its devastation by fire on the basis that it could not have been conveyed with vacant possession as it was subject to the leases in favour of the Appellants.

(c) The Third Issue: On the basis that the word "encumbrance" in the first proviso to Section 33(1) of the Act does not include a lease, whether the words in the proviso, namely: "having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters", by necessary implication mean that the proviso is applicable only if in fact at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances tenancies or occupation by squatters. 10 20

(d) The Fourth Issue: Whether the words "actual earnings" in Section 33(1)(d) of the Act in the context means provable earnings based on actualities in contrast to speculative earnings and accordingly in the context of the facts of the present case whether the Second Appellant is entitled to have its claim for compensation for loss of actual earnings considered and to payment of the amount of compensation (if any). 30

15. On the first issue the Appellants respectfully submit that on a true construction of the Act the term "acquisition" in the first proviso to section 33(1) of the Act must be given its ordinary meaning and that the first proviso contemplates a precise date on which some thing or event happens, which amounts to an acquisition, and not a period of time over which a series of things or events happened. In this case no such thing or event has occurred, which could in any way be said to amount to an acquisition before 21st May, 1973, the date of expiry of the period of six months of the subject land being devastated by fire. The Appellants rely on the three relevant canons of constructions, namely: 40 50

- (a) The "Golden Rule": In the construction of the statute the ordinary meaning of the word is to be adhered to: Maxwell on Interpretation of Statute (12th ed. p.43).
- (b) Where the legislature uses in a statute a legal term which has received judicial interpretation it must be assumed that the term is used in a statute in a sense in which it has been judicially interpreted: Craies on Statute Law (7th ed.) p.167
JAY v JOHNSTONE (1893) 1 QB 25 p.27.
- (c) A statute must be construed within its own framework ("within the four corners of the Act"): Maxwell on Interpretation of Statute (12th ed.) p.47.

16. The Appellants respectfully submit that acquisition of land involves the transfer of title or change of ownership to the acquirer, and when that happens the land can be said to have been acquired:

BELFAST CORPN. v. O.D. CARS LTD. (1960)
 AC 490 pp.491, 517

GURU DATTA SHARMA v. STATE OF INDIA A.I.R.
 (1961) (S.C.) 1684, 1967

JOSHI JAYANTILAL v. GUJURAT STATE A.I.R.
 (1962) Gujarat 297, 298, 308

SALUBAI RAMCHANDRA v. CHANDU SAJU A.I.R.
 (1966) Bombay 194, 195, 196, 210-211.

It is submitted that under the scheme of the Act acquisition takes place when the Collector takes possession of the land. Thereafter the Collector gives notice to the Registrar of Deeds (under Section 18(a)) or lodges an instrument of acquisition with the Registrar of Titles (under Section 18(b)). The taking of possession marks the stage when all that remains to be done in order to transfer the title is the administrative act of the Collector in giving the notice under Section 18(a) or lodging the instrument under Section 18(b). The Government loses its rights to withdraw from proceedings for the acquisition of any land as soon as possession is taken, but it may withdraw up till then: Section 48(1). This is clearly a pointer to the taking of possession being the stage at which land is

effectively acquired. The following sections of the Act are further pointers to the same effect:

- (a) Section 41, under which interest on compensation is to run from taking of possession, if compensation has already been made.
- (b) Section 36, under which, where the Appeals Board increases the compensation, it may direct interest to be paid on the increase from the date of taking possession. 10
- (c) Section 8(1)(a), under which the Collector is required to issue notice expressly stating that the Government intends to acquire the land.

The Government can be said to have acquired the land only when it takes possession and can no longer withdraw from proceedings for the acquisition. Although the taking of possession and the formal vesting would be a short time apart, they could be as close together as the Collector can administratively make them. 20

17. The Appellants further rely on the following matters in support of the contention that acquisition does not occur before taking of possession, namely:

- (a) The Appellants remained liable to Government for and in fact paid property tax of the subject land in respect of the period up to the Collector's taking possession thereof on 5th September, 1974. 30
- (b) The Appellants remained liable to the Health Authorities for the care and maintenance of the site.

18. The Appellants concede that the construction of the first proviso to Section 33 (1) of the Act urged by the Appellants may appear at first sight to give rise to an inconsistency in Section 48 of the Act. But it is submitted that this apparent inconsistency can be resolved by construing the word "acquisition" appearing in the third line of Sub-section (1) of Section 48 and the second line of Sub-section (2) thereof as "proceedings for acquisition", which would 40

then harmonise with the words "proceedings for acquisition" and "those proceedings" appearing subsequently in Sub-section (2) thereof.

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19. In the course of its Judgment the Court of Appeal, after stating that the Collector in making the award and in taking into account the matters mentioned in Section 33(1) of the Act in determining the award is acting in a quasi-judicial capacity and therefore must act impartially, continued:

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"If the construction Mr. Boydell seeks to place on the words "an acquisition" is correct, the Collector, having completed the inquiry, when he is pondering over the amount of compensation he thinks should be allowed in his award, is in a dilemma. At that point in time he does not know which of the two market values i.e. market value according to Section 33(1)(a) or market value according to the first proviso, he must take into consideration in arriving at his award for the land. He must decide on one of two alternative courses of action before he can give his award, namely:-

p.100 l.45 to
p.102 l.12

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(1) do nothing and wait until six months after the date of publication of the Section 5(1) notification; or

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(2) ask the appropriate Minister, as a case of urgency, to direct him, under Section 17(1) to take possession of the land whereupon he can take possession and immediately thereafter give the necessary notice or lodge the necessary instrument of acquisition whereupon the land vests in the State.

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If the Collector decides on course of action (1) then the first and third provisos do not apply and he can then decide the amount of compensation on the basis that the market value of the land is at the date of publication of the Section 5(1) notification. This course would favour the person or persons entitled to the compensation awarded.

If the Collector decides on course of action (2) then the first proviso will

operate and he can then decide the market value of the land on the basis that the market value is at the date immediately before the land was devastated and proceed to give effect to the rest of the first proviso and to the third proviso. This course would be unfair to the person or persons entitled to the compensation awarded and would favour the acquirer.

Whichever course the Collector adopts he would not be acting impartially and in our opinion this situation could not have been intended by the legislature. In our opinion the use of the words "in the case of an acquisition", bearing in mind the ordinary meaning of "acquisition" as the "action of acquiring ...", indicate that the legislature was referring in the first proviso, in general terms to land which is being acquired and was not referring to land which is being acquired and of which possession has been taken by the Collector, or to land which has vested in the State under Section 18 of the Act." 10
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The Appellants respectfully submit that the conclusion so arrived at by the Court of Appeal in the above passage and the reasoning that led the Court to that conclusion are wrong. The Appellants accept that the Collector in making his award for compensation and taking into consideration the matters mentioned in Section 33(1) of the Act is acting in a quasi-judicial capacity and must therefore act impartially. However, it does not follow that by reason of this impartial role the Collector cannot, after the holding of the enquiry under Section 10 of the Act, determine which of the two values, i.e. market value under Section 33(1)(a) or market value according to the first proviso, he must take into consideration in making his award, if the construction of the first proviso contended by the Appellants is accepted. The Collector clearly can act impartially and choose one of the two values for the purpose of making his award depending on whether he wishes to acquire the land before the expiry of six months from the date of devastation or any time thereafter. 30
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20. The Appellants respectfully submit that under the provisions of the Act the Government

is in full control of the proceedings relating to compulsory acquisition. Under Section 16 of the Act the Collector may take possession of the land in question as soon as he makes the award. By Section 17(1) the Minister may direct the Collector in case of urgency to take possession after 7 days from the date of the notice under Section 8 and under Section 17(2) the Minister has absolute discretion to direct the Collector to take possession of the land which is intended to be acquired even before any declaration under Section 5 is published provided it is published within 7 days thereafter. It is submitted that both the Minister and the Collector for the purposes of the Act should be considered as two components of the acquiring authority and not a separate and independent authority.

21.. The Appellants respectfully submit that the words "in the case of an acquisition" in the first line of the proviso are used to classify the type of acquisition by referring to any of the purpose specified in Sub-section (1) of Section 5 of the Act, and do not refer to an act of "acquisition" under the Act. Nor do they refer "in general terms to the land which is being acquired" as decided by the Court of Appeal. It is submitted that the construction thus placed by the Court of Appeal on the first proviso to Section 33(1) of the Act does unnecessary violation to the language of the Act. If the Act is imperfect, the consequence of its imperfection should not be visited upon the Appellants, and any ambiguity should be resolved in favour of the Appellants.

22. The Court of Appeal further held that the construction placed on the first proviso to Section 33(1) of the Act is supported by the history of the legislation. It is the respectful submission of the Appellant that the intention of Parliament in adding, in 1966, the words "in the case of any such acquisition within a period of six months of the land being devastated or affected as aforesaid" was to enable a land owner to know, within a limited period of time after the devastation, whether or not his land would be acquired. The construction contended for by the Appellants gives full and complete effect to this intention of Parliament: his land may be blighted (by uncertainty as to the Government intentions) but if possession has not been taken

by the end of six months the period of uncertainty is ended and the blight is lifted. On the construction preferred by the Court of Appeal the period of uncertainty and therefore the blight could continue indefinitely, and consequently the mischief which the added words were intended to prevent would not be prevented.

23. On the second issue it is the respectful submission of the Appellants that the Court of Appeal was wrong in holding that the term "encumbrance" includes the leases granted to the Appellants respectively. The Appellants are persons interested as defined in Section 2 of the Act. The first proviso to Section 33(1) refers to encumbrances, tenancies or occupation by squatters, whereas the second proviso to the same Section refers to rights or liabilities of any owner, lessee, tenant or occupier and the third proviso (also to the same Section) refers to "encumbrances, tenancies or occupation by squatters" but does not refer to lessees. It is respectfully submitted that the term "encumbrance" in the Act cannot include a sub-lease or a sub-sub-lease as in the present case. The Appellants will rely on:

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- (a) Gerrard's Dictionary of English Law on the definition of encumbrances.
- (b) District Bank Limited vs. White (1958) 1
W.L.R. 148 n. 148

23A The Appellants' leases appear in the Registry of Deeds on the Title and accordingly the Appellants are entitled to compensation in respect of those leases. The "encumbrances, tenancies or occupation by squatters" referred to in the first proviso to section 33(1) are "interests" which would not and indeed do not appear on the title and belong to persons who would not be entitled to compensation. If the Appellants are treated as persons entitled to compensation in respect of their leasehold interests it would be absurd and unjust if those same interests are construed as "encumbrances" thereby prejudicing the Appellants' rights to full compensation.

considered separately by the Collector on their own merits as land not subject to any encumbrances or tenancies. At its lowest there is a

substantial ambiguity which should be resolved in favour of the subject.

10 25. On the third issue the conclusion arrived at by the Court of Appeal is correct and the Appellants support such a conclusion. The Appellants rely on the following canon of construction, namely: where the words in the statute are ambiguous, there is a presumption that the legislature does not intend to limit or affect the rights of property further than clearly appears from the enactment:

Maxwell on Interpretation of Statutes (12th Edition) pp.247, 251-2.

R v CHAPMAN (1931) 2 KB 606 at 609.

WALSH v SECRETARY OF STATE FOR INDIA (1863) 10 HLC 367 11 ER 1068 p 1076.

HOUGH v WINDUS (1884) 12 QBD 224, 227, 234-5, 237.

A-G v HORNER (1884) 14 QBD 245, 256-7.

20 DAVID v DA SILVA (1934) AC 106,114.

BELFAST CORPN v O.D. CARS LTD. (1960) AC 490, 517-8.

26. It is the contention of the Appellants that the following words in the proviso, namely:

"having due regard to the fact that at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupations by the squatters"

30 must by necessary implication mean that the proviso is applicable only if at the material time the land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters.

27. The words quoted are capable of two constructions namely:

(a) "having due regard to the fact if it be the fact", or

40 (b) "having due regard to the fact even if it is not the fact".

The Appellants submit that a strong indication that the construction in (a) is to be preferred is the use of the following words in the third proviso, namely:

"..... the value of such land had it been vacant land not subject to any such encumbrance
.....".

These words clearly suggest that the land to be valued is the land which actually was subject to encumbrances, tenancies or occupation by squatters and accordingly the first proviso is applicable only if the land could not have been conveyed with vacant possession as it was subject to encumbrances tenancies or occupation by squatters. At the very least, there is a substantial ambiguity in the construction of the words quoted in paragraph 26 above, which ambiguity should in accordance with the accepted canon of construction referred to above be resolved in favour of the subject. 10

28. On the fourth issue the Appellants support the conclusion reached by the Court of Appeal. It is the respectful submission of the Appellants that the phrase "actual earnings" means provable earnings based on actualities as distinguished from speculative earnings. If the Respondent's contention is correct there can never be a claim for loss of earnings when the first proviso is involved because, ex hypothesi, business is not literally being carried on from the moment of the fire. 30

29. All the relevant principles of construction support the contention of the Appellants. The fundamental question is "did the acquisition injuriously affect the Second Appellant's actual earnings". In order to answer this question it is necessary to pose another question, namely: "what was the event which prevented the resumption of trading by the Second Appellant". The event was certainly not the fire: If there had been no intervention by the acquiring authority after the fire there is no reason why the new building would not have been reinstated and trading resumed. The Second Appellant was obliged by the covenants of the lease to rebuild the premises. Plans for the new buildings were drawn; planning permission for the new building 40

was applied for but the application was refused on the sole ground that the acquiring authority intended to acquire the site. There was no suggestion that if the land had not been acquired the Second Appellant would not have resumed trading in the new building.

10 30. The Appellants humbly submit that the Appeal by the Appellants should be allowed and the Cross-Appeal by the Respondent be dismissed and the Respondent should be ordered to pay to the Appellants their costs of this Appeal and Cross-Appeal for the following, among other

R E A S O N S

As regards the Appeal -

- 20 (1) BECAUSE on a true construction of the first proviso to Section 33(1) of the Act there has not in the present case been "an acquisition for any purpose specified in sub-section (1) of Section 5 of the Act" in respect of the subject land within a period of six months from the date of the subject land being devastated or affected by fire.
- (2) THE subject land at all material times before it was devastated by fire was not subject to any encumbrance, tenancy or occupation by squatters and the term "encumbrance" does not include either of the leases of the Appellants described above.

30 As regards the Cross-Appeal by the Respondent -

- (3) BECAUSE of the reason given by the Court of Appeal.
- (4) BECAUSE the words in the proviso quoted in paragraph 26 must by necessary implication mean that the proviso is applicable only if at the material time the subject land could not have been conveyed with vacant possession as it was subject to encumbrances, tenancies or occupation by squatters.
- 40 (5) BECAUSE the words in the third proviso clearly support this construction.

- (6) BECAUSE the phrase "actual earnings" means provable earnings based on actualities and not speculative earnings.

PETER BOYDELL

L. P. THEAN

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