Trinity Term
[2021] UKPC 18
Privy Council Appeal No 0126 of 2019

JUDGMENT

Kerzner International Mauritius Holdings Ltd (Appellant) *v* Assessment Review Committee and another (Respondents) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Briggs
Lady Arden
Lord Hamblen
Lord Leggatt
Lord Burrows

JUDGMENT GIVEN ON

12 July 2021

Heard on 6 May 2021

Appellant	*Respondents*
Maxime Sauzier SC Shrivan Dabee (Instructed by ENSafrica (Mauritius))	James Guthrie QC (Instructed by Royds Withy King)

LORD HAMBLEN:

Introduction

1. This appeal concerns the valuation of a freehold plot of land ("the property") adjoining Le Saint Géran Hotel in Mauritius for the purposes of a share sale transaction concluded on 4 April 2007 between the appellant as buyer and Sun Resorts Ltd as seller.

2. The property is 34 arpents and 51 perches in size. It has a sea-frontage of 250m whilst at the back it is 600m wide, giving it an irregular shape. At the material time it was used as a nine hole golf course.

3. For the purpose of the share sale transaction, the property was valued at Rs 345,566,722 (Mauritian rupees) and this was the consideration paid by the appellants for its purchase.

4. The second respondent ("the Registrar General") decided to reassess the value of the property for the purposes of registration duty and land transfer tax pursuant to his powers under section 28 of the Land (Duties and Taxes) Act 1984 ("the 1984 Act"). On 17 October 2007 the lead Government valuer, Mr Jeebodhun, inspected the property, and on 26 December 2007, he assessed its open market value to be Rs 1,170,000,000. His valuation was made on the basis that there were no restrictions on the use of the land and that its highest and best use was as a hotel site.

5. On 14 March 2008, the appellant lodged representations with the first respondent, the Assessment Review Committee, (the "ARC"), asking for a review of the Registrar General's assessment under section 19 of the Mauritius Revenue Authority Act 2004 ("MRAA").

6. Following a hearing at which evidence was given on behalf of both parties, the ARC agreed with the Registrar General that the property should be valued on the basis that its highest and best use was as a hotel site but disagreed with some of the comparator sales which had been relied upon. It arrived at a valuation of Rs 855,364,000, as set out in a case stated.

7. The appellants appealed to the Supreme Court of Mauritius pursuant to section 21 of the MRAA on the basis that the ARC's valuation was "erroneous in law", the only permitted ground for appeal.

8. On 19 June 2019, the Supreme Court (Judges P Fekna and J Benjamin Marie Joseph) gave judgment dismissing the appeal and holding that the ARC had made no error of law.

9. The appellants appeal against the Supreme Court's decision as of right to the Privy Council pursuant to section 81(1)(b) of the Constitution of Mauritius.

The ARC decision

10. The ARC, as established by section 18(1) of the MRAA, is a specialist body, consisting of a Chairperson, and one or more Vice-Chairpersons, who must be barristers of not less than five years standing, and such other members as may be appointed by the responsible Minister, being persons having experience in accountancy, economics, taxation, law or business administration.

11. The matter was heard before the ARC at sittings on 9 July 2013, 1 October 2015 and 3 March 2016.

12. At the hearings the ARC heard evidence for the appellant from:

(1) Mr Tommy Wong, who gave evidence of the transaction between Sun Resorts Ltd and the appellant and its approval by the authorities, including the Prime Minister's Office ("PMO").

(2) Mr Ramlakhan, a valuer who had submitted a report determining the value of the property on the basis of its use as a golf course, using two different valuation methods, namely the sale comparison approach and the residual approach. In relation to the sale comparison approach, he relied on prior sales of two golf courses in Mauritius. In relation to the residual approach, he assumed that the property would be used for residential purposes. He gave evidence consistently with his report.

13. For the Registrar General there was evidence from:

(1) The Planning Inspector of the Flacq District Council, Mr Mohamedally, who gave evidence that the zoning and planning status of the property permitted development, and that the appropriate development would be hotel development.

(2) The Assistant Permanent Secretary in the PMO, Mrs Rughoo, who gave evidence that that the PMO is not the authority that determines market value, and that it relies on the fact that this will be considered by the Registrar General who will re-assess the declared value if need be.

(3) Mr Jeebodhun, whose report had valued the property by applying the highest and best use approach and relying on comparables relevant to its development as a hotel site. He gave evidence consistently with his report.

14. As set out in the case stated, the ARC found in summary as follows:

(1) that the valuation as carried out by the appellant's valuer was not appropriate to determine the open market value of the property at the material time;

(2) that the Government valuer had correctly applied the highest and best use approach to determine the open market value of the property;

(3) that when considering the valuation exercise done by the Government valuer, there was only one comparable on which he could rely to make his valuation: namely plot TV 4094/51, which had sold at Rs72m per arpent of land in 1999;

(4) that the rate of Rs72m per arpent had to be considerably adjusted, taking into account the various characteristics of the property, to a final basic rate of Rs 24,786,000 per arpent, having regard to the fact that a larger plot will have less value per arpent than a small plot (50%); that the property has an irregular shape (a further 10%); the existence of a sewage treatment plant on the land and the cost of removing the golf course to put up a hotel (a further 15%); and to cater for the sea frontage of 250m as opposed to some 600m width at the rear of the property (a further 10%). The open market value of the property at the time of the transfer was therefore assessed at Rs 24,786,000 per arpent, giving a final figure of Rs 855,364,000.

The Supreme Court decision

15. The appellant appealed to the Supreme Court contending that the ARC decision was erroneous in law on the following grounds:

(1) The ARC had wrongly equated the determination of the open market value of the property with finding the highest and best use to which the property could be put.

(2) There was insufficient evidence on record allowing the ARC to come to the conclusion that the highest and best use for the property is a hotel development.

(3) The ARC was wrong to have considered TV 4094/51 as a starting point for calculating the open market value of the property.

(4) The discounts used by the ARC to determine the open market value of the property were arbitrary.

(5) Given the lack of adequate and sufficient comparables, the ARC ought to have adopted the valuation method used by the appellant's valuer.

16. The Supreme Court dismissed the appeal on all grounds. It found that there was nothing legally wrong with the ARC's approach to determining the market value of the property, its use of plot TV 4094/51 as a comparable or the discounts which it made and that the ARC had not acted perversely.

The appeal

17. An appeal to the Supreme Court from a decision of the ARC by way of case stated only lies where the decision is "erroneous in law". As stated in section 21 of the MRAA:

> "Any party who is dissatisfied with the decision of the committee under section 20(7), as being erroneous in law, may lodge in the Registry of the Supreme Court an appeal against that decision."

18. As the Supreme Court explained, whether a case stated is "erroneous in law" is to be considered in accordance with the guidance provided in the House of Lords case of *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14. In that case, Lord Radcliffe explained the proper approach as follows (at p 36):

> "When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law.

> If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that, this has been responsible for the determination. So there, too, there has been error in point of law. … the true and only reasonable conclusion contradicts the determination."

19. In summary, the court should only interfere if it is apparent on the face of the case stated that the tribunal has erred in law, as, for example, by applying the wrong legal test, and that bears upon the determination. If the correct legal test or approach has been followed, then it has to be shown on the facts as found that no reasonable tribunal applying that test or approach could have come to the conclusion reached - see, for example, *Pioneer Shipping Ltd v BTP Tioxide Ltd (The "Nema")* [1982] AC 724 per Lord Roskill at pp 752-753. As Lord Roskill there stated, the court "ought not to interfere merely because the court thinks that upon those facts and applying that test, it would not or might not itself have reached the same conclusion, for to do that would be for the court to usurp what is the sole function of the tribunal of fact". A court will not, however, be bound by a finding of fact made if it is perverse and irrational in the sense that no reasonable person could have reached it or if there is no evidence to support it - see, for example, *Bracegirdle v Oxley* [1947] KB 349, p 353 per Lord Goddard CJ; *R v North West Suffolk (Mildenhall) Magistrates' Court, Ex p Forest Heath District Council* [1998] Env LR 9, pp 18-19 per Lord Bingham of Cornhill CJ. A court may only make a finding if it was the only conclusion which a reasonable tribunal could have reached on the facts as found and it was unreasonable for the tribunal not to make any such finding – see *Stone v Hitch* [2001] EWCA Civ 63, [2001] WL 14954.

20. In order to succeed on an appeal under section 21 of the MRAA the appellant therefore needs to show that it is apparent from the case stated that the ARC adopted a wrong legal test or approach; or that they reached a conclusion which no reasonable tribunal, properly instructed as to the law, could have reached on the facts as found; or that a material finding was perverse and irrational or there was no evidence to support it.

21. The parties were not agreed as to the issues which arise on the appeal since the Registrar General considered that most of the issues sought to be raised by the appellant are issues of fact dressed up as issues of law. Without prejudice to that objection, the principal issues are as follows:

(1) The highest and best use issue - whether the ARC erred in law in its approach to highest and best use.

(2) The open market value issue - whether the Supreme Court/ARC erred in law in its approach to determining open market value.

(3) The comparables issue - whether the ARC's conclusion as to the appropriate comparables was perverse and irrational.

(4) The discounting rate issue - whether the ARC's conclusion on discounting was perverse and irrational.

(1) The highest and best use issue - whether the ARC erred in law in its approach to highest and best use.

22. The appellant contends that the highest and best use test has been wrongly understood and/or applied and that the relevant factors have not been considered by the Government valuer, the ARC and the Supreme Court.

23. In terms of case law, the appellant refers to and accepts the guidance given in *Spencer v Commonwealth* [1907] HCA 82 (quoted with approval in the Mauritian Supreme Court judgment in *Registrar General v Société Safeland & Cie* [2011] SCJ 55) and *Vyricherla Narayana Gajapatiraju (Raja) v Revenue Divisional Officer, Vizagapatam* [1939] AC 302 .

24. In *Spencer v Commonwealth* Isaacs J stated as follows:

> "The facts existing on 1 January 1905 are the only relevant facts, and the all important fact on that day is the opinion regarding the fair price of the land, which a hypothetical prudent purchaser would entertain, if he desired to purchase it *for the most advantageous purpose for which it was adapted*." (Emphasis added)

In the *Vyricherla Narayana Gajapatiraju* case the Privy Council stated that:

> "For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined … but

> also *by reference to the uses to which it is reasonably capable of being put in the future*. … No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes, but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land … the possibility of its being used for building purposes would have to be taken into account." (p 313; Emphasis added)

25. These authorities indicate that highest and best use focuses on the most advantageous use to which the land is reasonably capable of being put in the future.

26. The appellant contends, however, that highest and best use has a more specific meaning and, in this regard, relies upon *International Valuation Standards* (7th ed) and *The Appraisal of Real Estate* (3rd Canadian ed). In the former it is said that it means a use which is "reasonably probable" and which is "physically possible, appropriately justified, legally permissible, financially feasible". In the latter it is said that "to determine highest and best use, the appraiser must analyze data, not just compile it"; and that: "One misconception is that it is acceptable to simply state the highest and best use conclusion. Appraisals typically require some analysis of highest and best use. Solely providing data is not addressing highest and best use - the data must be analyzed."

27. No doubt these texts provide valuable guidance as to best practice but they cannot be elevated to the status of a necessary legal requirement of any determination of highest and best use.

28. That they cannot be so elevated undermines the appellant's essential submission on this issue which is that there was insufficient evidence to conclude that the highest and best use of the property would be as a hotel site. In particular, it is stressed that the ARC was not provided with the necessary data to substantiate any conclusions as to reasonable probability, physical possibility, appropriate justification, legal permissibility and financial feasibility. Even if this be the case, it does not involve an error of law unless this was a legal requirement or failing to have such data rendered the conclusion reached by the ARC perverse. It is not and cannot be suggested that there was no evidence to support the ARC's conclusion.

29. The appellant submits that the fact that the ARC failed to give any consideration to whether development as a hotel site was reasonably probable, physically possible, appropriately justified and financially feasible is demonstrated by its alleged failure to take into account the following matters:

(1) the fact that the golf course would have to be destroyed after having been in existence for decades;

(2) the cost of building a new hotel;

(3) the opportunity cost of constructing new hotel buildings;

(4) the fact that the elimination of the golf course would change the nature of the hotel considerably;

(5) the investment required for new buildings, added to the investment to acquire the property;

(6) the number of years that it would take to amortise the investment;

(7) the unusual shape of the Subject Property having a 250m sea frontage as compared to a rear end of length 600m and its having a sewage treatment plant in front of it.

30. In fact, similar points were made before the ARC as recorded in the statement of case as follows:

> "Learned Senior Counsel further submitted that the Government Valuer should have considered the possibility of other use of the subject property before concluding that the highest and best use was the construction of hotel buildings. As such his conclusion was based on mere assumptions not backed by evidence. According to Learned Senior Counsel, Mr Jeebodhun should have considered the following:
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> 1. the fact that the golf course would have to be destroyed;
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> 2. the opportunity cost of constructing new hotel buildings ie loss of investment in the destruction of the golf course which will not bring any revenue once destroyed;

3. the elimination of the golf course would change the nature of the hotel considerably;

4. the investment required for new buildings coupled with the investment to acquire the subject property;

5. the number of years it would take to amortise the investment;

6. The period of time the subject property has been used as a golf course;

7. The conditions (e) and (f) in the certificate from the PMO dated 28.03.07 restrict dealings with regard to the subject property."

31. The Board agrees with the Registrar General that there is no reason to suppose that the ARC did not take these submissions into account. For example, the ARC stated that:

> "The Government Valuer has taken into account the fact that the subject property is within the settlement area of the Eastern Growth Zone (Outline Planning Scheme of Moka/Flacq District Council) and that it is located between two hotels. It has a sea frontage. Also he has considered the fact that the subject property is a freehold land. With these facts in mind, the Government Valuer has come to the conclusion that the best use the land can be put to is putting up a hotel building on it, in line with the National Development strategy as stated by the Planning Inspector of the District Council."

32. By way of further example, these considerations are referred to again in more detail in the ARC decision (at pp 31-33 of the Record). The irregular size and shape of the property is also considered (p 33 of the Record). The sewage treatment plant is referred to in various parts of the decision (including pp 11, 12, 23, 35 and 36 of the Record), it being found that the Government surveyor considered it to be a potential benefit (p 23 of the Record). The ARC also recognised that a hotel development would imply costs in removing the golf course (p 36 of the Record).

33. It should also be noted that if financial feasibility was considered to be an issue, it might reasonably be expected that the appellant, as the party financially involved, would provide some evidence to that effect. This was not, however, addressed by any of its witnesses, nor were any questions on this matter put to the Registrar General's witnesses.

34. As the Supreme Court observed in relation to this argument of the appellants:

> "We have duly considered the whole of the reasoning adopted by the Committee. We find that, at several instances, the Committee did address those issues as and when they were relevant."

35. As the Supreme Court further stated:

> "It is clear that the Committee adopted the approach of the Government Valuer. It must be noted, however, that the Committee did not do so *in vacuo*. Rather, it had in front of it, evidence pertaining to the zoning of the land and the evidence of witnesses familiar with the market and the use to which such land could be put. It was not disputed before the Committee that the land *in lite* was found in, or at least, partially in a Tourism Growth Zone. Further, under the National Development Strategies and Policies, a luxury and high-quality development is recommended for the subject property. These facts were not challenged by the appellant's valuer.
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> Moreover, the Planning Inspector of the District Council of Flacq stated that, in view of the location of the property, the most appropriate use to which the land could be put was for the construction and exploitation of a luxury hotel thereon as provided for in the National Development Strategy. True it is that this was only the opinion of the Inspector; but it must be pointed out that his opinion was not based on a mere fancy but on what is provided for in development policies which were applicable at that time."

36. In summary, no legal error has been identified in the approach of the ARC. There was ample evidence to support the conclusion the ARC reached as to highest and best use. The ARC did have regard to the matters about which the appellant complains. Its conclusion was not perverse. For all these reasons, the Supreme Court was correct to conclude that the ARC's conclusion on this issue was not "erroneous in law".

(2) The open market value issue – whether the Supreme Court/ARC erred in law in its approach to determining open market value.

37. The Registrar General's valuation of the property was carried out pursuant to his powers under section 28(1)(a) of the 1984 Act. Under section 28(6) that valuation was to be of "the open market value" of the property at the date of registration. "Open market value" is defined in the 1984 Act as being "the value which a property might reasonably be expected to realise if sold on the open market by a prudent vendor".

38. The appellant submits that the test for determining open market value of land on a specific date is that set out in in *Spencer v Commonwealth*, quoted with approval in the Mauritian Supreme Court judgment in *Registrar General v Société Safeland & Cie*, namely:

> "… the test of value of land is to be determined, not by inquiring what price a man desiring to sell could actually have obtained for it on a given day, ie, whether there was in fact on that day a willing buyer, but by inquiring 'What would a man desiring to buy the land have had to pay for it on that day to a vendor willing to sell it for a fair price but not desirous to sell?'. It is, no doubt, very difficult to answer such a question, and any answer must be to some extent conjectural. The necessary mental process is to put yourself as far as possible in the position of persons conversant with the subject at the relevant time, and from that point of view to ascertain what, according to the then current opinion of land values, a purchaser would have had to offer for the land to induce such a willing vendor to sell it, or, in other words, to inquire at what point a desirous purchaser and a not unwilling vendor would come together."

39. The appellant submits that the Supreme Court wrongly treated these considerations as being merely factors to be taken into account rather than the essential test to be applied. Reliance is placed on the following passage from the Supreme Court judgment:

> "We do not dispute that a few of the relevant factors to be taken into account in determining the market value of a property are the price that a purchaser [*sic* vendor] would expect to get for the property coupled with the price that a buyer would be willing to pay for it."

40. This passage has to be read together with what follows:

> "However, these are not the only considerations that weigh in the balance. It is clear that there are other factors that come into play and one of the many factors to be taken into account is the highest and best use to which the property could be put once the buyer has acquired it. In fact, no reasonable seller and no intuitive buyer can be said to ignore this factor in determining what would be the market value of the property subject matter of the sale. The highest and best use does not speak of the actual use to which the property will be put but is a reflection, to a certain extent, of the development potential of the property which cannot be ignored when one considers the manner in which the market of real property operates."

41. When the passage is read as a whole, it is apparent that the Supreme Court was not mistaking the relevant test. It was simply making the point that one of the factors to be taken into account in applying that test is the highest and best use of the property.

42. In any event, what is material is whether the ARC erred in law. The complaint made by the appellants before the Supreme Court was that the ARC had wrongly equated the open market value of the property with the highest and best use to which it could be put. It is apparent that the ARC did not do so. Indeed, it stated in terms that:

> "… the Committee did not equate the determination of the open market value to a finding of the highest and best use to which the property can by put. But the highest and best use of the property is an essential consideration in determining the open market value of the property."

43. As the Supreme Court held:

> "Upon reading the findings of the Committee, we are satisfied that it did not '*equate*' the market value of the property with the highest and best use to which it could be put. Rather, the Committee considered the highest and best use of the property as one of the relevant factors to be taken into account in determining its market value. The approach that the Committee took was that one ought not to take a restrictive view as the one taken by the appellant's valuer. Rather, the land ought to be valued taking into account the other possible uses to which it could be put."

44. Neither the Supreme Court nor the ARC erred in law in its approach to determining open market value.

(3) The comparables issue – whether the ARC's conclusion as to the appropriate comparables was perverse and irrational.

(4) The discounting rate issue - whether the ARC's conclusion on discounting was perverse and irrational.

45. It is common ground that the sales comparison approach is an appropriate valuation method. As stated in *Marklands Ltd v Virgin Retail Ltd* [2004] 2 EGLR 43 at para 9:

> "Valuation essentially proceeds by analogy. The valuer looks for an analogue that is as close as possible to that which he has to value, and which has been the subject matter of a real transaction. He then works on the premise that if the subject matter of his valuation were to be the subject of a similar transaction, it would command the same value as the analogue. Since the analogue will never be identical to the subject matter of the valuation, the valuer will have to make adjustments to the value revealed by the analogue in order to reflect the differences between the analogue and the subject matter of his own valuation. In the case of a property valuation, the analogues are usually called 'comparables'. In a property valuation, typical adjustments will reflect differences between the comparables in location, terms of letting and so on."

46. The ARC understandably rejected the two comparables relied upon by the appellant's surveyor for his sales comparison approach as both involved valuations of golf courses based on future use as golf courses rather than as hotel developments. It also understandably rejected his residual approach as it was based on residential use rather than hotel use.

47. The ARC also rejected a number of the comparables relied upon by the Government surveyor. Two were rejected as they involved leasehold rather than freehold land. Another was rejected as it came after the sale of the property, although it was accepted that it could be indicative of market trends. The ARC was left with one comparable, TV 4094/51. This was a freehold plot of 1 arpent with sea frontage next to Le Saint Géran and had been sold in 1999 for Rs 72m per arpent.

48. The ARC then made a number of adjustments to reflect the differences between the comparable and the property. As it explained:

> "The Committee takes into consideration that the subject property (is) of an extent of 34A51 as opposed to the 1 arpent of TV 4094/51; that the subject property has an irregular shape; that there is a sewage treatment plant on the subject property; that a hotel development will imply costs in removing the Golf Course, and that the subject property has a frontage of 250m on the sea while at the back the land has a width of about 600m, the Committee finds that the basic rate of Rs72m/arpent necessitates considerable adjustments taking into account all these characteristics of the subject property."

49. The adjustments took the form of a series of discounts or allowances given so as to arrive at a final valuation figure of Rs 24,786,000 per arpent. The ARC found as follows:

> "It is an established fact that big plots have less value than small plots because big plots are more difficult to sell. In the present case the subject property is 34A51 while the Comparable is 1 arpent. In these circumstances it is most reasonable to give an allowance of 50% for size. This will give a rate of Rs36m /arpent.
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> The Committee considering that the subject property has an irregular shape, find that a further allowance of 10% is most reasonable. This will give a rate of Rs32,400,000/arpent.
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> The Committee finds that a further allowance of 15% should take care of the disadvantage of having a sewage treatment plant in front of the property and the cost of removing the Golf Course to put up a hotel. This will give a rate of Rs27,540,000/arpent
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> Finally the Committee finds that a further allowance of 10% should be given to cater for the seafrontage of 250m as opposed to some 600m width at the rear. This gives a final basic rate of Rs24,786,000/arpent."

50. The ARC appears to have thought that another sale can be considered as a comparable only if it occurred before the valuation date. The Board doubts whether that assumption was necessarily correct. However, it has not been challenged by the appellant. The argument advanced is that the ARC was wrong to treat as a comparable the past transaction which it used as a starting-point for its valuation. The appellant submits that the fact that the valuation of the comparable ended up being discounted by around 65% shows that it was not a proper comparable. In particular, it is pointed out

that the plot in question was nearly 35 times smaller than the property, that this in itself meant it was an inappropriate comparable and that the discounts given by the ARC were unexplained and arbitrary, especially that of 50% given in relation to disparity in size. In this connection reliance is placed on what was said by the Mauritian Supreme Court in *Nazeer v Board of Assessment* 2007 SCJ 61 when considering comparables relied upon in a compulsory acquisition case:

> "… the first set referred to four sales of properties of 17, 33, 42 and 54 toises, whilst the second set related to nine sales of properties of 15, 24, 40, 44, 61, 61, 72, 121 and 136 toises. It is obvious that the area of those properties is a far cry from the size of the property *in lite* which is of an area of 772 toises."

51. Relative size of plot is clearly an important factor when considering comparables but there is no rule as to when it will mean that no comparison can be made, still less a rule of law. It will all depend on the circumstances of the case under consideration. That is a matter of evaluation for the specialist tribunal, the ARC, as is, more generally, the appropriateness of comparables, the adjustments to be made and the amount of any such adjustment. As the Supreme Court stated:

> "We should not lose sight of the fact that the Committee is a body constituted of experts in the field of valuation who are aware of the forces of the market and the trends that are applicable for the time being. Certain matters are best left to the estimation of experts who take decisions based on experience and practice."

52. While it would have been preferable for there to have been fewer differences between the transaction taken as a comparable and the property, it cannot be said that the ARC made any error of law in forming the expert opinion that the earlier transaction could properly be used, with suitable adjustments, as a comparable for the purpose of the valuation exercise. It recognised that there were various material differences between the comparable and the property and it made adjustments to reflect those differences. It explained why each adjustment was being made and the amount of the adjustment which it considered to be reasonable in all the circumstances. That is a rational and appropriate approach. Which comparable to use and what adjustments should be made were matters for the ARC to determine. It has not been shown that their decision on these matters was perverse, irrational or "erroneous in law".

Conclusion

53. For all the reasons outlined above, the appeal should be dismissed.