

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2016] SGCA 60

Civil Appeal No 114 of 2015

Between

**(1) ATTORNEY-GENERAL
(2) HOUSING AND
DEVELOPMENT BOARD**

... Appellants

And

**ALJUNIED-HOUGANG-
PUNGGOL EAST TOWN
COUNCIL**

... Respondent

JUDGMENT

[Statutory Interpretation] — [Construction of Statute]

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Attorney-General and another
v
Aljunied-Hougang-Punggol East Town Council

[2016] SGCA 60

Court of Appeal — Civil Appeal No 114 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA
3 August; 27 November 2015; 7, 20, 22, January; 8 July; 18 August; 24
October 2016

28 October 2016

Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

1 Before we proceed to the substance of our orders, it will be helpful to recall how we have come to this point. When this matter first came before us last year, the respondent was the Aljunied-Hougang-Punggol East Town Council (“AHPETC”). However, soon after we reserved judgment following the hearing in August 2015, the 2015 General Elections were held and the constituency of Punggol East (“Punggol East Constituency”), which was formerly administered by the respondent, changed hands. On 1 October 2015, the Town Councils (Declaration of Towns) Order 2015 (S 577/2015) (“the Order”) was passed to provide that Punggol East Constituency would henceforth fall to be administered not by the respondent, which was re-named the Aljunied-Hougang Town Council (“AHTC”), but by the Pasir Ris-Punggol Town Council (“PRPTC”) instead. The Order also provided for a transfer of all “property, rights and liabilities ... that related to or were connected with”

Punggol East Constituency to PRPTC. We delivered our judgment on the substantive merits of the appeal on 27 November 2015 (see *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2016] 1 SLR 915 (“the Judgment”)).

2 Thereafter, the parties came before us to seek clarifications in respect of various parts of our orders. For present purposes, we focus on the hearing which was convened on 8 July 2016. The issue placed before us then was whether PRPTC was bound by our orders in the Judgment. The context of the application was that PRPTC had appointed its own accountants, PricewaterhouseCoopers (“PwC”), to carry out an examination of the affairs of Punggol East Constituency during the period when it had been under the respondent’s purview. Where appropriate to context, we refer to this as “the period in question”. In the course of the oral argument on that issue, it became clear that it was common ground that PRPTC did in fact have an interest in the review of Punggol East Constituency’s financial affairs. After all, it is the entity which – following the Order – is now statutorily charged with administering the affairs of Punggol East Constituency, and in whom all property, rights, and liabilities related to or connected with the constituency are vested. However, the difficulty lay with precisely how PRPTC was to go about performing this review, given that AHTC was concurrently performing a similar audit in the context of remedying certain lapses that had admittedly taken place during the period in question and it had the requisite documents.

3 Given the parties’ agreement that PRPTC had an interest in the work that was being done (which we observed follows from the terms of the Order), we adjourned the matter and said as follows:¹

¹ Minute sheet of hearing held on 8 July 2016 at p 2.

In the light of the parties' agreement that PRPTC on behalf of Punggol East [Constituency] has an interest in the work that is being done by KPMG, the professionals – namely, PricewaterhouseCoopers and KPMG – should communicate directly with one another and afford each other such access as may reasonably be required to safeguard each party's interests.

In the event that there is a specific difficulty that arises in the course of such discussions or access, the affected party may apply to the court for directions.

4 Thereafter, PRPTC and AHTC attempted to negotiate the terms on which PRPTC would be granted access to the necessary documents, but were unable to come to an agreement. Thus, a further hearing was convened on 18 August 2016. On that occasion, Mr Peter Low, counsel for AHTC, said that it had not been possible to reach an agreement because AHTC had an interest in protecting the confidentiality of those documents which related not only to Punggol East Constituency, but also to the other constituencies which had been, and continued to be, within AHTC's purview. On this basis, AHTC sought to impose restrictions on the accountants PRPTC could appoint to undertake a review into Punggol East Constituency's affairs. We held that that there was no legal basis for AHTC to impose any such restrictions since PRPTC was a separate legal entity and it was entitled to carry out its affairs and appoint whomsoever it wanted to safeguard its interests.

5 Insofar as the question of the access to the documents was concerned, the parties agreed broadly on the following three points:²

(a) First, documents which pertained only to Punggol East Constituency – which have come to be referred to as “Category 1 documents” – should be made readily available to PRPTC. By

² Minute sheet of hearing held on 18 August 2016 at p 2.

definition, these are documents which, to use the language of the Order, related exclusively to or were connected only with Punggol East Constituency. Thus, it did not seem to us that any concerns over confidentiality could be raised in respect of them.

(b) Second, documents which did not relate to Punggol East Constituency at all were not even in issue as PRPTC had no interest in them and were not entitled to have sight of these documents. The reason for this was self-evident.

(c) Third, to the extent that there were documents which were relevant not only to Punggol East Constituency but also to the other parts of the town – which were referred to as “Category 2 documents” – PRPTC should be granted access to them. This is because these are documents which related to or were connected with Punggol East Constituency. To the extent that any limitation was to be imposed in relation to the access or use of specific documents, we held that this had to be rooted in specific concerns of confidentiality and the protection of AHTC’s confidential information in respect of specific documents. If such concerns existed, arrangements would have to be made to manage those concerns and to facilitate access. The certified minute sheet of these proceedings records this point as follows:³

Insofar as there are documents which are relevant to [Punggol East Constituency] but also affect the other parts of the original Aljunied-Hougang-Punggol East Town Council, PRPTC should have access to those, but it is necessary to work out practical administrative arrangements for that access to take place. If AHTC has specific concerns in relation to confidentiality of specific parts of those documents, we will need to have

³ *Ibid* at p 2.

a conversation on how to manage that. Our thinking is that one way of managing this is to let the professionals talk to each other but if there are other issues that need to be addressed, these can be considered at a later juncture.

6 After we made those observations, Mr Low addressed us and indicated AHTC's agreement that it was willing to provide PRPTC's accountants, PwC, with access to the Category 1 documents without conditions and/or undertakings. However, he submitted that the accountants should be allowed to work out the terms of access to the Category 2 documents between themselves. With that in mind, we gave the following directions:⁴

- (a) as far as the documents that relate solely to Punggol East [Constituency] are concerned [that is to say, the Category 1 documents], AHTC will give access without conditions to PWC;
- (b) as far as all the other documents [by which we meant the Category 2 documents] are concerned, the solicitors – possibly with the assistance of the accountants – are to work out the conditions upon which the documents can be had by PRPTC and PWC (as well as their relevant advisors); and
- (c) should it prove difficult to work out these conditions, the parties are at liberty to apply to the court for directions with a handful of documents that will illustrate the difficulties.

7 We set all this out by way of background to make the following three points, which reflect the current position:

- (a) First, PRPTC has an interest in the financial affairs of Punggol East Constituency, which has now been placed under its purview. This interest arises out its status as the entity presently responsible for the affairs of Punggol East Constituency. This interest extends, but is not

⁴ *Ibid* at p 3.

limited, to ensuring compliance with the orders we made in the Judgment, including the remediation of any breaches of the Town Councils Act (Cap 329A, 2000 Rev Ed) (“the Act”) that affect Punggol East Constituency.

(b) Second, in order to safeguard this interest, PRPTC is *prima facie* entitled to have access to documents which relate to or were connected with the affairs of Punggol East Constituency. This follows as a corollary of the first point, for if PRPTC is the ultimate successor-in-title to the property, rights and liabilities of the former town of AHPETC insofar as it relates to or is connected with the affairs of Punggol East Constituency, then it must follow that PRPTC has a proprietary interest in all the relevant documents.

(c) Third, this interest of PRPTC has to be balanced against any legitimate countervailing interest that AHTC might have in safeguarding the confidentiality of some of the documents, which relate not only to the affairs of Punggol East Constituency, but also to other parts of the town that are not, and have never been, under the control of PRPTC. This third point arises out of the recognition of the unique facts of this case, in which AHTC administered the three distinct constituencies under its charge as a single administrative unit. This point about the balancing of interests was one which we recognised from the outset, as we said on 8 July 2016 that each party was to afford the other “such access as may reasonably be required to safeguard each party’s interests”.⁵

⁵ Minute sheet of hearing held on 8 July 2016 at p 2.

8 We now turn to apply these three propositions to the issues which were presented to us at the hearing on Monday (24 October 2016). These are: first, whether the scope of disclosure should be narrowed only to documents which are related to the past payments review; second, whether disclosure of the Category 1 documents may be deferred; and last, the conditions upon which PRPTC may have access to the Category 2 documents.

9 We begin with the issue of the scope of disclosure. AHTC had applied for the scope of disclosure to be limited only to documents which are related to the past payments review to avoid a duplication of effort, which it submitted would not only be unnecessary but also disruptive. As we understand it, this pertains only to the Category 2 documents, since no issue has previously been raised in relation to the Category 1 documents. In our judgment, this request is without merit. The short point is that PRPTC’s entitlement to the Category 2 documents is independent of the scope of work assigned to PwC. It is important to bear in mind that the Category 2 documents were created for and in the course of the administration of Punggol East Constituency as much as for the other constituencies forming AHPETC. PRPTC – as the successor to all the property, rights and liabilities which concern Punggol East Constituency – has a presumptive right, *qua* owner, to these documents. Indeed, it seems to us that Mr Low had also conceded this point on 8 July 2016 when he accepted that PRPTC had an interest in “the work done by KPMG [LLP]”, which – we pause to add – is *not* limited to the past payments review, but extends to all the matters outlined in the Judgment “insofar as it concerns the interests of Punggol East [Constituency]”.⁶

10 At the last hearing on 18 August 2016, we did stress that we did not

⁶ *Ibid* at p 2.

think that the identical exercise should be performed by two different groups of people, but we expressly stated that this was in the context of what might be unnecessarily disruptive rather than in the context of any question of *entitlement*. Nor was it contemplated that PRPTC's entitlement to the documents which relate to Punggol East Constituency could or should be confined in any way. Indeed, we would observe that AHTC's continuing interest in Punggol East Constituency arises essentially out of its duty to remedy previous lapses and to comply with the other terms of the Judgment; however, PRPTC's interest is a broader one that covers not only the duty to see to it that any previous lapses that affect Punggol East Constituency are remedied in compliance with the Judgment, but also by reason of its continuing duty (as the town council responsible for the affairs of Punggol East Constituency) to discharge its functions and duties and to exercise its powers under the Act. To this end, PRPTC has a legitimate interest to have access to all the documents it may need to safeguard its interest, and it has this interest irrespective of what it may or may not instruct PwC to do. This difference is a relevant factor to be considered when it comes to any balancing of interests that may be called for. Thus, we cannot see any basis for AHTC to restrict PRPTC only to the documents which relate to the past payments review.

11 We move to the Category 1 documents. It is common ground that the Category 1 documents need to be provided, and it is also common ground that not all of them have been provided thus far. The only issue which remains to be decided is AHTC's request that it be allowed to delay the release of the rest of the Category 1 documents in its possession. The reason for this, as was explained to us during the hearing, is that many of the Category 1 documents are contained in files which contain information that is said to be confidential

in the sense that it also pertains to other areas formerly under the purview of AHPETC (and which continue to be under the purview of AHTC today) aside from Punggol East Constituency, and that it would be administratively onerous for AHTC to extract the necessary documents for PRPTC. In the circumstances, AHTC submitted that the best solution would be for PwC to have access to all their files on-site, but this could not be done until they had received guarantees that PwC would undertake not to share confidential information with others, including PRPTC.

12 In our judgment, this request cannot be granted. We begin with the principle of the matter. By definition, the Category 1 documents are those which relate only to Punggol East Constituency and no issue of the balancing of interests arises. It follows, therefore, that PRPTC is entitled to these documents and it should have them, free of conditions. This was what we ordered and this was also conceded by Mr Low at the hearing on 18 August 2016.⁷ We are unable to see how any administrative difficulty can be an adequate answer to a failure to comply with an obligation of disclosure that has been specifically imposed by this court. We also note with some regret that no effort was made to seek the indulgence of this court before AHTC decided that it need not comply in full with our order. As we pointed out during the hearing, it was clear to us from what was said by Mr Low and Ms Sylvia Lim (a representative from AHTC who, with our leave, addressed us on some matters) that it was not that disclosure of the remaining Category 1 documents was *impossible*, but that it would be *difficult* for it to be done at this time. In our judgment, this was unsatisfactory. AHTC may decide to do the relevant work itself and extract the documents for disclosure at once, or it can invite PwC to access the information as it may be found in the files. However,

⁷ Minute sheet of hearing on 18 August 2016 at p 2.

if AHTC chooses the latter option, it is not entitled then to impose conditions on access when it has already accepted that it is obliged to disclose all the Category 1 documents free of any conditions and/or undertakings (see [6] above). That said, we appreciate that a practical solution can and should be worked out to enable this to be done promptly and we will set out our orders on this at the conclusion of this judgment.

13 We turn to the Category 2 documents. As we said before, these are documents which relate, at least in part, to Punggol East Constituency and PRPTC has a presumptive right to these documents. However, we also recognise the principle that AHTC may have a right to protect the confidentiality of those parts of the documents which *do not* relate to Punggol East Constituency or which also relate in an aggregated way to other parts of the town formerly under the purview of AHPETC. As we explained during the hearing on Monday, what we sought to do when we issued our orders on 18 August 2016 was to strike a balance between these two competing interests. To that end, we ordered that PRPTC was to have access to the Category 2 documents, subject only to the caveat that if AHTC had any *specific and identifiable* concerns with the disclosure or use of *particular* documents then the parties would have to work together to devise “practical administrative arrangements” to achieve the twin goals of facilitating access while preserving confidentiality.⁸ We did not contemplate, as AHTC now submit, that disclosure of *all* of the Category 2 documents could be withheld indefinitely pending the conclusion of a blanket confidentiality agreement. After all, AHTC has the documents in its possession and if it has any specific confidentiality concerns, the onus must fall on it to raise them in order that measures may be taken to mitigate these concerns while also facilitating

⁸ *Ibid* at p 2.

access. The position for which AHTC now contends is not only outside the scope of our orders, but it is also one which would not properly *balance* the competing interests involved.

14 When he appeared before us, Mr Low submitted that AHTC had six broad concerns in respect of the Category 2 documents: (1) confidential resident information; (2) vendor information not in the public domain; (3) information protected under the Personal Data Protection Act 2012 (No 26 of 2012); (4) confidential staff information; (5) rates and price structures not in the public domain; and (6) other proprietary information belonging to AHTC. With respect to Mr Low, all that has been done is that the word “confidential” or its cognate expressions have been added as adjectives to various classes of documents. We cannot see how these generic descriptors can suffice to show that AHTC has specific confidentiality concerns in respect of particular documents. There is no explanation of the nature of these documents, the specific parts of these documents in respect of which AHTC asserts an interest of confidentiality, or the reason why the information in question might be considered confidential or proprietary. Without sufficient particulars, we find it difficult to identify the specific concerns which warrant protection in a manner as would impede PRPTC’s exercise of its legitimate right to have access to the documents. In *O’Brien and others v Komesaroff* (1982) 41 ALR 255 at 268, Mason J, with whom the other judges of the High Court of Australia agreed, stressed that a claimant cannot come to court with a “global claim for protection” and must instead “identify some particular pieces of information and show that they were confidential or that an obligation of confidence had arisen with respect to them [such that] he would be entitled to protection”. We agree with this.

15 Mr Low offered to show us samples of these documents to explain the

relevant concerns. However, when we made our orders on 18 August 2016, it was never contemplated that we would be engaged in the examination of the relevant documents for the purposes of determining whether confidentiality is made out in circumstances where AHTC has not even taken any steps towards identifying the specific confidentiality concerns which it has. What we had in mind was that if the parties were unable to agree *after* certain specific confidentiality concerns had been identified, then it would be open for them to seek further directions from us as to whether the claim to confidentiality is properly made, and, if not agreed, the specific conditions on which access may be had. Here, AHTC has not even put forward any specific confidentiality concerns and so the question of us reviewing the documents to make the appropriate orders does not even arise.

16 So where does this leave us? In our judgment, the Category 2 documents must be handed over to PRPTC; however, PRPTC may only disclose or use the Category 2 documents in the furtherance of its legitimate legal interests and no further. These legitimate interests comprise the objects which were set out at the conclusion of the Judgment (at [131]), and the functions, duties, and powers which PRPTC has under the Act. These relate, in broad terms, to PRPTC's general mandate to control, manage, and administer the common property of the areas under its control for the benefit of its residents and to manage its financial affairs in accordance with the requirements of the Act and the Town Councils Financial Rules (Cap 329A, R1, 1998 Rev Ed). In principle, Mr Davinder Singh SC, counsel for PRPTC, appears to accept this, for he submitted that PRPTC would be entitled to the Category 2 documents "so long as the documents are used in the exercise of the rights of PRPTC or in the discharge of [its] duties".

17 For avoidance of doubt, in the pursuit of these legitimate interests,

PRPTC may consult such advisers as it deems fit on the nature and contents of these Category 2 documents. We note that during the hearing, Mr Low – correctly, in our view – conceded that PRPTC was entitled to consult its solicitors on the contents of the Category 2 documents for the purposes of obtaining legal advice.⁹ However, any of the advisers they consult would naturally be bound by the same obligations as PRPTC.

18 Before we proceed to summarise our orders, we should clarify two points. The first relates to the nature and basis of our orders. We have already stressed that the position has always been that PRPTC has a right to have the Category 2 documents, subject to any clear indication of *specific* concerns of confidentiality that AHTC might raise in respect of *particular* documents. We emphasise the requirement of specificity because it is an important aspect of the law of confidentiality that a claimant who seeks relief must identify with sufficient particularity what is alleged to be confidential (see *Chiarapurk Jack and others v Haw Par Brothers International Ltd and another and another appeal* [1993] 2 SLR(R) 620 at [24] and [38] and R G Toulson & C M Phipps, *Confidentiality* (Sweet & Maxwell, 3rd Ed, 2012) at para 3-086). We have already explained why AHTC has not satisfied this standard. For the avoidance of doubt, to the extent that we are making any provisions here to limit the use of the documents, we do so not because any specific concerns over confidentiality have been raised, but because we think it is appropriate to ensure that the documents are made available *only* for the purpose of ensuring compliance with the Judgment, and consistently with the provisions of the Act.

19 The second point we would make concerns the precedential value of

⁹ Minute sheet of hearing dated 24 October 2016 at p 3.

our decision. During the oral hearing, Mr Singh pressed the point that the orders we make here will set a “dangerous” precedent for future cases involving the handover of towns. However, as we observed during the hearing, the factual circumstances of this case are quite unique. If matters in the former AHPETC had been arranged differently, such that Punggol East Constituency’s documents were discrete and complete, there would not be *any* argument that PRPTC, as the present entity in charge of the affairs of Punggol East Constituency, would be entitled to those documents. However, it is due to the particular manner in which the affairs of AHPETC had been managed prior to 2015 that has necessitated these orders. But we stress once again, as we did during the hearing, that this is a factual observation and is not meant in any way as a criticism.

20 In summary, our conclusions are that:

- (a) AHTC is to provide PRPTC with access to all the Category 1 documents and Category 2 documents forthwith, and no later than the close of business on 4 November 2016. Mr Low initially asked that any date for disclosure be fixed after the first week of November because he said that AHTC would be busy working with KPMG LLP (“KPMG”), who are the accountants AHTC appointed after we handed down the Judgment, until the end of October. However, it emerged during the hearing that AHTC’s representatives were to meet KPMG on 27 October 2016 in connection with the finalisation of KPMG’s past payments review report, and we were given to understand this would conclude this part of their interaction. We therefore grant AHTC a period of seven days from the date of this judgment to completely comply with the orders we have made. We emphasise that this should be seen as the latest date for such compliance and thus AHTC should

as far as possible comply forthwith and commence the completion of its obligations in this regard without delay.

(b) PRPTC may only disclose and use the Category 2 documents released to it in the furtherance of its legitimate legal interests, which comprise ensuring that there has been compliance with the orders made at [131] of the Judgment, and the discharge of its functions or duties or the exercise of its powers as a town council under the Act. During the hearing before us, Mr Low accepted that AHTC was no longer seeking to prevent PRPTC or its advisers from accessing the documents. Instead, AHTC's wish was to restrict the extent to which PRPTC could disclose or use these documents. In our judgment, the only permissible limitation in the present circumstances is that which confines the disclosure or use in the aforesaid manner and for the aforesaid purposes.

21 As for the manner of disclosure, AHTC can elect either to make copies of all the necessary documents available to PRPTC or to allow PwC to have access to the originals wherever they are presently located. It seems to us that the latter would allow the process of disclosure to take place more quickly, and given our order that the disclosure or use of any Category 2 documents would be subject to the conditions which we have outlined, the concerns which AHTC had should have been addressed. However, the choice is ultimately one for AHTC to make. What it cannot do is to cite administrative difficulties in the extraction of the documents as a reason for non-compliance.

22 We also make two ancillary points. First, Mr Singh had asked that the Category 1 documents which are in KPMG's possession be released first. However, Mr David Chan, counsel for KPMG, informed us during the hearing

that KPMG did not have any documents in its custody, and that the documents were all stored at AHTC's offices. Thus, we make no such order. Second, Mr Singh had asked that KPMG be directed to release its working papers to PwC to expedite the audit process. In our opinion, this is a sensible suggestion. However, we invite KPMG to inform us by letter copied to the other parties if it objects to this and, if so, on what basis. Following that, if there is an issue to be resolved, we will consider whether any further direction is required.

23 Finally, we set out our orders more formally, as follows:

(a) The respondent, now known as AHTC, is to provide PRPTC with access to:

(i) all the documents which relate exclusively to or were connected only with the affairs of Punggol East Constituency ("Category 1 documents") which are in its possession, custody and power; and

(ii) all other documents which relate to or were connected with the affairs of Punggol East Constituency that are not Category 1 documents ("Category 2 documents") which are in its possession, custody, and power.

(b) AHTC is to provide PRPTC with access to the Category 1 documents and Category 2 documents forthwith, and in any event no later than 4 November 2016.

(c) PRPTC is not to disclose or use the Category 2 documents save with the leave of the court, other than:

(i) for the purposes of ensuring compliance with the orders set out at [131] of the Judgment; and/or

- (ii) in the discharge of its functions or duties, or in the exercise of its powers as a town council under the Act.

Sundaresh Menon
Chief Justice

Chao Hick Tin
Judge of Appeal

Andrew Phang Boon Leong
Judge of Appeal

Aurill Kam and Germaine Boey (Attorney-General’s Chambers) for the second appellant, the Housing and Development Board; Peter Cuthbert Low and Elaine Low (Peter Low LLC) for the respondent, now known as the Aljunied-Hougang Town Council (“AHTC”); Davinder Singh SC, Jaikanth Shankar, Pradeep Singh, and Stanley Tan (Drew & Napier LLC) for the non-party, the Pasir Ris-Punggol Town Council (“PRPTC”); Edwin Tong SC and Peh Aik Hin (Allen & Gledhill LLP) for PricewaterhouseCoopers, the accountants for PRPTC; and David Chan and Tan Su Huei (Shook Lin & Bok LLP) for KPMG LLP, the accountants for AHTC.
