

Pan United Marine Ltd v Chief Assessor
[2007] SGHC 21

Case Number : OM 47/2004
Decision Date : 08 February 2007
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Ong Sim Ho (Ong Sim Ho) for the appellant; Julia Mohamed (Inland Revenue Authority of Singapore) for the respondent
Parties : Pan United Marine Ltd — Chief Assessor

Revenue Law – Property tax – Annual value – Assessment – Floating dry docks not located in property but on seabed not within boundaries of property – Sole access to floating dry docks by ramp from property – Whether floating dry docks assessable as part of land of property – Section 2(1) Property Tax Act (Cap 254, 1997 Rev Ed)

Revenue Law – Property tax – Building – Floating dry docks not structure erected on land – Whether floating dry docks amounting to "buildings" chargeable to property tax – Section 2(1) Property Tax Act (Cap 254, 1997 Rev Ed)

Words and Phrases – "Building" – Whether definition including floating dry docks – Section 2 Property Tax Act (Cap 254, 1997 Rev Ed)

Words and Phrases – "Dock" – Whether definition including floating dry dock – Section 2 Property Tax Act (Cap 254, 1997 Rev Ed)

Words and Phrases – "Machinery" – Whether definition including floating dry dock – Section 2 Property Tax Act (Cap 254, 1997 Rev Ed)

8 February 2007

Judgment reserved.

Lee Seiu Kin J:

1 This is an appeal against the decision of the Valuation Review Board ("the Board") upholding the respondent's assessment of the annual value of the subject property ("the Property"). The Property, located at 33 Tuas Crescent, comprises five plots of land leased by the appellant from Jurong Town Corporation. Within the Property are a shipyard and a concrete batching plant. The respondent had included in his assessment of annual value under the Property Tax Act (Cap 254, 1997 Rev Ed) ("the Act"), three floating dry docks that were berthed on Tuas Bay adjacent to the Property.

2 The Board had dismissed the appellant's appeal and made the following findings:

- (a) the floating dry docks used by the appellant in its business of ship building and repair are "buildings" chargeable to property tax under the Act;
- (b) the floating dry docks are to be assessed together with the dry land; and
- (c) the floating dry docks did not constitute machinery used for the repair of vessels, and that the floating dry docks, being specifically included within the definition of "building" in s 2 of the Act, could not have been intended by Parliament to be taken out of assessment under s 2(2) (b) of the Act.

3 Before me the appellant contends that the floating dry docks ought not to be included in the assessment of the annual value of the Property.

The facts

4 The background facts are not disputed and the salient ones are as follows:

(a) The three floating dry docks were afloat in Tuas Bay. The appellant had a Temporary Occupation Licence for the use of the seabed for the purpose of keeping the vessels. The first floating dry dock was commissioned around 1987, the second in 1992 and the third in 1997. The floating dry docks were facilities used to carry out the business activities of the appellant.

(b) The floating dry docks were hinged to pile-like structures which were permanently fixed to the seabed. They were held in place by means of anchor and anchor chains in the case of one of them, and by clamping collars to mooring pins in the case of the other two. The structures were fully capable of being removed, towed away and reinstated, whether for a short or long distance.

(c) Access to each floating dry dock was by way of a ramp, one end of which was connected to the structure and the other resting on dry land. This ramp permitted workers, material and machinery to get to the structure via the Property. There was no other physical attachment nor connection of each floating dry dock to dry land.

(d) The floating dry docks were used to hold ships for repairs. To get a ship on a floating dry dock, water is first pumped into its tanks to submerge it partially. The ship to be repaired is then led into the submerged vessel. With the ship in position water is then pumped out of the tanks, enabling the vessel to float and lifting the ship in the process.

(e) A conventional dry dock uses a gate to control the water. The gate is first released to allow water to flow above the dock, and the water led in. Thereafter, the gate is closed and water pumped out so that the ship would sit on the base of the dry dock.

(f) A floating dry dock and a conventional dry dock are both used for ship repair. The difference is that the former floats on water while the latter is constructed on land. The advantage of a floating dry dock over a dry dock is that the floating dry dock is cheaper and can be moved away when needed. However, the disadvantage of a floating dry dock is that it cannot take ships beyond a certain size whereas a dry dock can take larger vessels.

(g) The respondent did not assess the foreshore land which was on a Temporary Occupation Licence.

Issues in the appeal

5 The question before me is whether, in the circumstances, the three floating dry docks may be taken into account in the assessment of the annual value of the Property for the purposes of the property tax payable under the Act. This depends on the determination of three issues as follows:

(a) whether the floating dry docks fall within the definition of "building" in s 2(1) of the Act and thus assessable to tax under s 6(1) of the Act;

- (b) whether the floating dry docks are machinery for the repair of vessels and hence should be excluded from assessment under s 2(2) of the Act; and
- (c) whether the floating dry docks fall to be assessed as part of the land.

Whether the floating dry docks are "buildings" under s 2(1)

6 Section 6(1) of the Act provides that an annual property tax shall be payable upon the annual value of "*all houses, buildings, lands and tenements whatsoever included in the Valuation List*" [emphasis added]. The Board decided that the floating dry docks fell within the definition of "building" in s 2(1) of the Act. That provision states as follows:

"building" means *any structure erected on land* and includes any house, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise, any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery; [emphasis added]

7 The definition has two limbs, viz:

- (a) any structure erected on land; and
- (b) includes any house, ... any slip, dock, wharf, ... and any oil refinery.

The first limb is a general criterion: "any structure erected on land". The second limb is a list of specific items. The first question is whether something that falls within one of the items listed in the second limb must satisfy the criterion under the first limb in order to come within the definition of building. Specifically, on the assumption that a floating dry dock falls within the word "dock" in the second limb, does that alone make it fall within the definition of building? Or must it also satisfy the criterion in the first limb, viz, is it a structure erected on land?

8 This definition was considered by the High Court in *Chief Assessor & Comptroller of Property Tax v Van Ommeren Terminal (S) Pte Ltd* [1993] 3 SLR 489 ('*Van Ommeren Terminal*'). The structures in question were oil storage tanks, each of which had a capacity of 6,000 cubic metres. They were fabricated elsewhere and brought to the site and hoisted onto their locations. The tanks were not affixed to the ground and merely held down by their weight on a base of rock and sand. Each tank could be jacked up for inspection of the base plate and to conduct any repair work. The tanks could be removed to another location by the same process they were brought in. After expounding the general canons of statutory interpretation regarding the use of the terms "means" and "includes", the court held that the specific items in the second limb extended the scope of the first limb. The learned judge said at [13]:

However, in the definition now under consideration, the legislature has used the words 'means ... and includes'. How should one approach such a definition? In my opinion a plain reading of that definition is surely this. The legislature has defined the word 'building' to bear the ordinary sense of 'any structure erected on land'. But it has also expanded the meaning of that word to encompass those items enumerated after the words 'and includes' irrespective of whether those items are structures erected on land. It will be noted that the legislature has used the words 'and includes' twice in the definition. With respect, I am unable to agree with the Board that the things enumerated after the words 'and includes' are merely examples of structures erected on land. For instance, a pier or jetty is not a structure erected on land. It is a structure erected over the sea or water.

9 Pursuant to s 9A of the Interpretation Act (Cap 1) (1985 Rev Ed), the learned judge examined the second reading speech in 1965 for the amendment of s 2(1) that included the definition of "building". He found that it supported his interpretation. The learned judge also cited the decision of the Supreme Court of India in *Regional Director, Employees' State Insurance Corporation v Highland Coffee Works* [1991] 3 SCC 617 which had to consider a similar definition. The Indian Supreme Court held that the words "and includes" in the second limb enlarge the scope encompassed by the first limb.

10 With respect, I fully agree with the reasoning of the court in *Van Ommeren Terminal* in relation to the definition of "building" in s 2(1) of the Act. Therefore, if the floating dry docks fall within the scope of the word "dock" in the definition then they would be "buildings" for the purpose of s 6(1) of the Act.

11 The next question is whether the floating dry docks fall within the meaning of "dock" in the definition of "building" in s 2(1). The appellant contends that they do not. In support of this, the appellant cited various structural engineering literature in which the term is discussed. Firstly, in my view, the interpretation of "dock" in the Act cannot be restricted to the vocabulary of practitioners of engineering. Parliament must be presumed to intend the ordinary meaning of the word in this instance. There are of course various meanings of the word "dock", but applying the *ejusdem generis* principle, it is clear from the surrounding words ("slip, wharf, pier, jetty, landing-stage") that it is used in the maritime sense. *The Oxford English Dictionary* defines "dock" (in the maritime sense) as follows:

An artificial basin excavated, built round with masonry, and fitted with flood-gates, into which ships are received for purposes of loading and unloading or for repair.

However, annexed to this definition is the following paragraph:

... *dry or graving dock*, a narrow basin into which a single vessel is received, and from which the water is then pumped or let out, leaving the vessel dry for the purpose of repair. (Sometimes also used for building ships.) *wet dock*, a large water-tight enclosure in which the water is maintained at the level of high tide, so that vessels remain constantly afloat in it. *floating dock*, a large floating structure that can be used like a dry dock.

12 The issue is whether a floating dry dock is a subset of "dock". Some assistance may be obtained from the definition of the verb "dock" in the *Oxford English Dictionary*:

To take, bring, or receive (a ship) into a dock.

In my view, the verb is the key. The activity concerned is the bringing of a ship into a dock. There are various types of docks depending on the purpose for which the ship is docked and the business decision of the entity that is performing the activity in furtherance of that purpose. A floating dry dock is just one type of dock. I therefore find that the floating dry docks in issue fall within the term "dock" in the definition of "building" in s 2(1) of the Act.

13 Notwithstanding the above, in my view, the technical literature cited by the appellant does not quite support its case. Three books were cited as follows:

(a) "A dock is the most general term for a place or structure at which a vessel may be moored. . . Piers, wharves, quays, bulkheads, and so forth, may serve as a dock." (see Gaythwaite, *"Design of Marine Facilities for the Berthing, Mooring, and Repair of Vessels"*, Van

Nostrand Reinhold, 1990, page 50).

(b) "In the United States of America the word "dock" is frequently used to denote a ship's berth, formed by what would be known in this country [England] as a pier or jetty or, if the berth is parallel with the shore – a quay or wharf." (see Cornick, *"Dock and Harbour Engineering - Vol. 1"*, Butler & Tanner Ltd, 2nd Ed., 1968, at page 82).

(c) "Municipal docks will usually be piers or wharves projecting out from or paralleling the shore, respectively. Finger piers are generally preferred as they provide berths on both sides or double the berthing space for the same length of wharf." (see Quinn, *"Design and Construction of Ports and Marine Structures"*, McGraw-Hill Book Company, 2nd Ed., 1972 at page 267 – 269).

It is clear that these literature describe the usual meaning of the word "dock" and do not exclude a floating dry dock from coming within the contemplation of that word.

Whether the floating dry docks are machinery under s 2(2)

14 The next issue is whether the floating dry docks are "machinery" under s 2(2) of the Act, which provides as follows:

(2) In assessing the annual value of any premises in or upon which there is any machinery used for any of the following purposes:

- (a) the making of any article or part thereof;
- (b) the altering, repairing, ornamenting or finishing of any article; or
- (c) the adapting for sale of any article,

the enhanced value given to the premises by the presence of such machinery shall not be taken into consideration, and for this purpose "machinery" includes the steam engines, boilers and other motive power belonging to that machinery.

15 Unfortunately there is no definition of "machinery" in the Act beyond what is stated in the last part of this provision. The appellant submitted that a floating dry dock is machinery used to "shore up" a vessel for the purpose of repair. There is no doubt that a floating dry dock is an ingenious solution to the problem of lifting a large vessel, weighing perhaps thousands of tons, off the water so that repair work may be carried out under dry conditions. It is much easier to pump out the water surrounding a ship than to lift it out of the water, which is the principle utilised in a conventional dry dock. In the case of a floating dry dock, the vessel and the entire dock are lifted out of water by pumping water out of the flooded tanks. A floating dry dock may be described as a structure that, combined with machines such as water pumps, carries out the function of lifting a large vessel off the water. This system may well be considered to be machinery under s 2(2) of the Act and if that were the exclusive function of the floating dry dock, I would have so held. However a floating dry dock also functions as a place where the ship is stored and where the repair works are carried out. In addition, other machinery and equipment (e.g. pneumatic tools, machine tools, welding equipment) are accommodated in the floating dry dock, not to mention facilities such as toilets and rest areas. It is more a floating factory than a mere machine. I therefore hold that the floating dry docks do not fall within the meaning of "machinery" in s 2(2) of the Act.

16 What is pertinent, however, is that the value of machinery on board the floating dry dock

should not be taken into consideration by virtue of s 2(2) of the Act. The respondent had argued that the provision is restricted to machinery used for the (a) making, (b) altering, repairing, ornamenting or finishing, or (c) adapting for sale, of any article. The respondent submitted that the floating dry dock, as machinery, is used to lift the ship above water level and this does not fall within any of the activities listed in s 2(2) of the Act. I do not agree with this submission since the lifting is part of the process by which repair work is carried out. If a car needs to be jacked up so as to enable the mechanic to gain access to the undercarriage to carry out repair work to the car, I cannot see how it is possible to argue that the activity of jacking the car up is not part of the repair work. Accordingly, I hold that the pumps that pump water into and out of the tanks are machinery under s 2(2) of the Act. However, it is arguable whether the tanks themselves are excluded under s 2(2). My preliminary view is that if they also contribute to the structural integrity of the dock, as I suspect they do, then they are part of the structure, and therefore the "building". But since the parties have made no submission on this matter I shall refrain from making a determination.

Whether the floating dry docks are assessable as part of the land

17 Although each floating dry dock is, as I have held, a building within s 2(1) of the Act, the vessel is not located within the Property. As the Board had noted in its grounds of decision at [21]:

... In this case, the floating docks were on seabed, which was not owned by the Appellants who merely were licensee entitled to occupy the seabed under the TOL. They were connected to the land owned by the Appellants only by ramps which allowed movement of workers and material. ...

The question is whether in the assessment of the annual value of the Property, account may be taken of a vessel connected to the Property in this manner, *i.e.* by a ramp by which the transfer of workmen, equipment and material could take place, but with the vessel positioned over seabed which is not within the boundary of the Property. I should point out at this stage that the ramp provides the sole access to the vessel, a factor which I find to be relevant and which I will discuss later.

18 Both parties relied on the decision of the High Court in *Van Ommeren Terminal* in which a second issue was whether the oil tanks, sitting on the ground under their own weight, were sufficiently annexed to the land so as to form part of the land. The learned judge referred to the decision of Blackburn J in *Holland v Hodgson* [1861-73] All ER 227 and cited the following passage (at p 242):

There is no doubt that the general maxim of law is that what is annexed to the land becomes part of the land, but it is very difficult, if not impossible to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case and mainly on two circumstances as indicating the intention, viz the degree of annexation and the object of the annexation. Where the article in question is no further attached to the land than by its own weight, it is generally to be considered a mere chattel: see *Wiltshire v Cottrell*, and the cases there cited. But even in such a case, if the intention is apparent to make the articles part of the land, they do become part of the land: see *D'Eyncourt v Gregory*. Thus blocks of stone, placed one on the top of another, without any mortar or cement, for the purpose of forming a dry stone wall, would become part of the land, though the same stones, if deposited in a builder's yard, and for convenience sake stacked on the top of each other in the form of a wall, would remain chattels.

Perhaps the true rule is that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land unless the circumstances are such as to show that they were intended to be part of the land, the onus of showing that they are so intended lying

on those who assert that they have ceased to be chattels; and that, on the contrary, an article which is affixed to the land, even slightly, is to be considered as part of the land, unless the circumstances are such as to show that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel. This last proposition seems to be in effect the basis of the judgment of the Court of Common Pleas delivered by Maule J in *Wilde v Waters*. This, however, only removes the difficulty one step, for it still remains a question in each case whether the circumstances are sufficient to satisfy this onus. In some cases, such as the anchor of the ship, or the ordinary instance given of a carpet nailed to the floor of a room, the nature of the thing sufficiently shows it is only fastened as a chattel temporarily, and not affixed permanently as part of the land. But ordinary trade or tenant fixtures which are put up with the intention that they should be removed by the tenant (and so are put up for a purpose in one sense only temporary, and certainly not for the purpose of improving the reversionary interest of the landlord), have always been considered as part of the land, though severable by the tenant. In most, if not all of such cases, the reason why the articles are considered fixtures is probably that indicated by Page-Wood V-C in *Boyd v Shorrock*, that the tenant indicates by the mode he puts them up that he regards them as attached to the property during his interest in the property.

The learned judge noted that this statement of the law was adopted by the Court of Appeal in *Gebrueder Buehler AG v Peter Chi Man Kwong & Ors* [1988] SLR 24 and in *People's Park Chinatown Development Pte Ltd (in liquidation) v Schinder Lifts (S) Pte Ltd* [1993] 1 SLR 591.

19 In applying the test in *Holland v Hodgson*, the Board relied on a line of English cases which held that a vessel docked adjacent to the occupied land could be rated if it were enjoyed with and enhanced the value of the land. In *Rudd (valuation officer) v Cinderella Rockerfellas Ltd* [2003] 1 WLR 2423, the rating authority assessed a vessel moored with the permission of the Port Authority and under a licence over the riverbed granted by the Crown. The vessel was fastened by ropes and chains to river frontage occupied by the ratepayer, with access secured by means of steel gangways. The English Court of Appeal upheld the decision of the authority to assess the vessel on the ground that it was a chattel sufficiently attached to the occupied land and enjoyed with and enhanced its value. *Felgate (VO) v Lotus Leisure Enterprises Ltd* [2000] RA 89 was a decision of the Lands Tribunal involving a floating restaurant moored at a dockside. It had no means of propulsion and was towed away twice a year for a few hours for essential maintenance of the hull. The vessel was connected to the dock wall by three hawsers at the bow and two hawsers at the stern. It was connected to all main services. The owner of the vessel had a lease of all the area of water forming part of the dock but did not own the dock. The Lands Tribunal held that the vessel was rateable because it was placed on the land and enjoyed with it in such circumstances with such a degree of permanence that the vessel with the land could together be regarded as one unit of occupation.

20 In the present case the Board observed that the three floating dry docks were integral to the business of ship repair of the appellant. The Board pointed out that, as there were no other docks in the appellant's shipyard and all ship repairing were carried out on these three floating dry docks, they were essential to the use of the Property as a shipyard and their presence enhanced its value. The Board took the view that, in those circumstances, the floating dry docks were part of the Property and they were properly included in the assessment of annual value.

21 The appellant submitted that this line of English cases concerned the very different rating regime that obtains in England. In England, rates are paid by the occupier on the hereditament whereas in Singapore property tax is paid by the owner on the land. The respondent cited the High Court decision in *Aspiden Holdings Ltd v Chief Assessor and Comptroller of Property Tax* [2006] SGHC 72 where the taxpayer argued that there was a difference between the Singapore property tax regime and the UK rating system in that under the former the owner is liable for the

property tax but under the latter, the liability for payment of tax falls on the occupier. In response to this argument, Andrew Ang J said at [38]:

It goes without saying that a property could as well be occupied by a tenant as by the owner. It is difficult to see why a valuation of a property should depend upon who pays the property tax.

22 On my part, I do not see the distinction suggested by the appellant, but even if there is one, it does not affect the outcome because the true test is that stated by Blackburn J in *Holland v Hodgson* which had been applied by the Court of Appeal in *Gebrueder Buehler AG v Peter Chi Man Kwong & Ors* and *People's Park Chinatown Development Pte Ltd (in liquidation) v Schinder Lifts (S) Pte Ltd* and the High Court in *Van Ommeren Terminal*. Applying that test, I find that there is sufficient annexation of the floating dry docks to the Property. What is relevant in the circumstances is not so much the manner in which the vessels are fixed in position or connected to the Property as the nature of the connection. For the three floating dry docks in issue to function as such, with access from the Property for labour, material and machinery by means of a ramp, what is important is that the vessels be securely fixed in their positions relative to the Property. Otherwise, the ramp will not provide a stable and safe access. Exactly how the vessels are fixed, *i.e.* whether by anchor or hinged to pile-like structures permanently fixed to the seabed or by clamping collars to mooring pins, is a technical decision made on the basis of optimisation of cost and effectiveness. The vessels can equally be tied to moorings constructed on dry land. These are but methods of rendering each vessel a seamless extension of the Property to enable the intended activities to be carried out smoothly and efficiently. Another factor is the fact that the ramps are the sole means of access to the floating dry docks. It would be quite another matter if the vessels had been anchored some distance off dry land and access thereto was by way of ferry or boat in which case there would be no exclusive access from the Property.

23 On the issue that the vessels are not located within the boundary of the Property, apart from relying on the decisions in *Rudd (valuation officer) v Cinderella Rockerfellas Ltd* and *Felgate (VO) v Lotus Leisure Enterprises* that have been impugned by the appellant, the respondent also cited the decision of the Valuation Review Board in *B.P. (Singapore) Ltd v Chief Assessor* [1959-86] SPTC 86 which, I should add, is a decision of great antiquity. The Board there included expenses incurred (in respect of drains, culverts and roadways over the drains) on land adjacent to the assessed property (a petrol station) which were necessary to be incurred for the benefit of the petrol station. Accordingly, I do not see anything that prevents the inclusion of a vessel in the assessment on the sole ground of its location outside the perimeter of the property to be assessed. The true test is that, to quote Blackburn J in *Holland v Hodgson*, "*it...remains a question in each case whether the circumstances are sufficient to [show that they were intended to be part of the land]*".

24 The appellant submitted that it is necessary to consider the purpose of the floating dry docks and argued that they were moored alongside the Property for one purpose only, *i.e.* to lift up ships to be repaired and to serve as a platform for the repair process. The appellant argued that the sole connection to the property, the ramp, "*merely allows access to and away from the floating dry docks. The purpose is and not to enhance the shipyard land.*" In my view the test is not based on the purpose that the owner has in mind for the chattel in question, but the effect it in fact has. The question is whether the chattel in fact enhances the value of such land. Indeed the matter can be considered from the point of view of the definition of "annual value" in s 2(1) of the Act which provides as follows:

"annual value" –

- (a) in relation to a house or building or land or tenement, not being a wharf, pier, jetty

or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes; and

(b) in relation to a wharf, pier, jetty or landing-stage, means the gross amount at which the same can reasonably be expected to be let from year to year, the tenant paying the expenses of repair, insurance, maintenance or upkeep;

25 There is no doubt that the presence of the floating dry docks enhances the gross amount at which the Property can be let. This was the approach taken by the Valuation Review Board in its decision in *B.P. (Singapore) Ltd v Chief Assessor*. In the present appeal the Board had considered that the presence of the floating dry docks next to the Property improved or promoted the enjoyment of the land as a shipyard. Indeed the shipyard could not function as one without the floating dry docks. I agree with the Board that the three floating dry docks were properly included by the respondent in his assessment of annual value of the Property.

Conclusion

26 The appeal is accordingly dismissed. Since the appellant has appealed only against the principle of assessment and not the quantum, the annual value of \$4,596,000 assessed by the respondent is upheld. I would order costs against the appellant.

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