SUPREME COURT OF QUEENSLAND

CITATION:	*Chew & Singh v Commissioner of Land Tax* [2007] QCA 78
PARTIES:	**LAI LENG CHEW and MANJIT SINGH** (applicants/appellants) **v** **COMMISSIONER OF LAND TAX** (respondent)
FILE NO/S:	Appeal No 9049 of 2006 Land Court Appeal No 1358 of 2005
DIVISION:	Court of Appeal
PROCEEDING:	Appeal from the Land Appeal Court
ORIGINATING COURT:	Land Appeal Court
DELIVERED ON:	16 March 2007
DELIVERED AT:	Brisbane
HEARING DATE:	6 March 2007
JUDGES:	Williams JA, Mackenzie and Muir JJ Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Leave to appeal granted** **2. Appeal dismissed with costs**
CATCHWORDS:	TAXES AND DUTIES – LAND TAX – OBJECTIONS AND APPEALS – IN GENERAL – the appellants were liable for land tax pursuant to amended notices of assessment – their appeal was dismissed before the Land Court in their absence – whether the appellants were denied natural justice by this dismissal – whether the failure to receive notice of the determination of unimproved value invalidates an assessment of land tax based on those valuations – consequences of an uncompleted contract of sale as at 30 June *Land Court Act 2000* (Qld), s 74, s 76 *Land Tax Act 1915* (Qld), s 3, s 3AA, s 3B(3), s 8, s 12, s 27(1A), s 58(5A) *Valuation of Land Act 1944* (Qld), s 41A, s 44(2), s 47 *Australian and Overseas Telecommunications Corporation Limited v Commissioner for Land Tax* [1994] 2 Qd R 350; [1993] QCA 21, Appeal No 153 of 1992, 24 February 1993, considered *Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223, considered

R v Thames Magistrates' Court; ex parte Polemis [1974] 2 All ER 1219, considered
Spinks v Commissioner of Land Tax [1963] QWN 37, considered

COUNSEL: M Singh appeared on his own behalf and on behalf of L Chew
J A Logan SC, with F W Redmond, for the respondent

SOLICITORS: M Singh appeared on his own behalf and on behalf of L Chew
Crown Solicitor for the respondent

[1] **WILLIAMS JA:** Pursuant to amended notices of assessment of land tax issued 17 May 2005 in accordance with the provisions of the *Land Tax Act 1915* (the "Act") the appellants (husband and wife) were notified of a liability in each to pay $20,867.55 by way of land tax. The appellants lodged a notice of objection to the land tax assessments on a number of grounds. The respondent disallowed the objections and effectively confirmed the assessments. The appellants lodged a Notice of Appeal to the Land Court on 28 March 2005. [It should be noted that the objections were to the initial assessments issued 2 November 2004. Consequent upon an amended valuation of one of the subject parcels of land the amended assessments were issued, and they became the operative assessments. The objections to the initial assessments, the respondent's reply and the appeal have been treated as relating to the amended assessments.] The appellants did not appear when the appeal was called on for hearing in the Land Court on 22 August 2005 and the appeal was dismissed with costs. The appellants then appealed to the Land Appeal Court on 29 September 2005. The appellants appeared in person and fully argued the merits of their case before that court. For reasons delivered on 14 September 2006 that appeal was dismissed.

[2] Section 74 of the *Land Court Act 2000* provides that a party to a proceeding in the Land Appeal Court may appeal, with leave of the Court of Appeal, to the Court of Appeal on the ground, *inter alia*, of error or mistake in law on the part of the Land Appeal Court. On the hearing of such an appeal the court is given wide powers by s 76 of the *Land Court Act 2000*. On the hearing of the appeal in this Court the male appellant appeared to represent both himself and his wife. The appellants are residents of Singapore and the male appellant is a solicitor there. The Court intimated at the outset of the hearing that it would reserve the question of leave and hear submissions on the merits.

[3] There was no dispute as to relevant facts. The appellants were the joint owners of six parcels of land: an island in Moreton Bay, three units on Hope Island, and two other properties on the Gold Coast. It was not disputed by the respondent for the purposes of the appeals that the appellants had not received notices pursuant to s 41A of the *Valuation of Land Act 1944* ("the VLA") with respect to the most recent valuations pursuant to that Act of the Hope Island units, which valuations were used by the respondent in calculating the amount of land tax payable by the appellants. It was also not disputed that by contract dated 2 June 2004, the appellants had agreed to sell Lot 130 (one of the Hope Island units) and that the sale was completed on 2 August 2004. It was against the background of those facts that the appellants challenged the assessments made by the respondent.

[4] Section 8 of the Act provides:

> "Subject to this Act, land tax shall be levied and paid upon the relevant unimproved value of all lands within Queensland which are owned by taxpayers, and which are not exempt from taxation under this Act."

It was not in dispute that the lands in question were not exempt from taxation. The first contention of the appellants is that when s 8 refers to the "relevant unimproved value" it is referring to the last valuation made pursuant to then VLA of which notice was received by the land owner. That meant, on their argument, that the respondent was not entitled to adopt the valuations of each of the Hope Island units which he did because the appellants had not received notice of those valuations.

[5] It is clear from the notices of assessment that the value of the lands in question was based on valuations pursuant to the VLA. The footnote in relation to objections refers to the fact that objections against valuations may be made to the General Manager Valuations, Department of Natural Resources and Mines. The value for land tax purposes was said to be the "lesser of the unimproved value effective for the year of assessment or the average of the unimproved value for the year of assessment and those values for the previous two years (three year average)." Section 3AA of the Act provides a definition of "averaged unimproved value" and it provides a formula for calculating that. It is clear from the formula that the reference is to the unimproved value as determined pursuant to the VLA. Further, s 27(1A) of the Act should be noted. It provides that on an appeal against a land tax assessment there is no right of appeal against the relevant unimproved value assigned to an area of land where that value was determined by the Chief Executive under the VLA.

[6] Whilst the failure of the appellants to receive notice of the determination of unimproved value pursuant to s 41A of the VLA may well have the consequence that the time for objecting under that Act is extended (note, for example, s 44(2) of that Act), it does not affect the validity of the determination of unimproved value pursuant to that Act. Once the value is recorded in the valuation roll, s 47 of that Act presumes the valuation to have been duly made and to have force according to the particulars.

[7] In the present case, as noted above, the appellants did object to the valuation of Garden Island after the initial land tax assessments were received and they were successful in having that valuation reduced; the consequence was amended notices of land tax assessments were issued. It is still possible for the appellants to raise objections under the VLA against the valuations relied on by the respondent for the Hope Island units on the basis that no notice of the relevant valuations were received. Should any of those valuations be reduced there would be a reduction accordingly in the land tax assessments and the appellants would be entitled to the appropriate refund.

[8] However, that analysis of the provisions of the Act and the VLA demonstrates, in my view, that the appellants cannot resist payment of land tax in accordance with the amended assessments because they did not receive notices of the relevant valuations of the Hope Island units. If further confirmation of that is required it is to be found in s 58(5A) of the Act which provides that the "omission to give any notice of assessment shall not invalidate the assessment." The term "assessment" is

defined in s 3 of the Act as including both the estimate of the value of land liable to taxation and the amount of land tax imposed thereon. Clearly it follows that the omission to receive a notice of valuation under the VLA does not invalidate an assessment of land tax based on those valuations.

[9] Section 12 of the Act provides:

> "Land tax shall be charged on land as owned at midnight on 30 June immediately preceding the financial year in and for which the tax is levied."

Owner is then defined in s 3B(3) relevantly as follows:

> "If an agreement has been made for the sale of land, whether or not the agreement has been completed by conveyance -
>
> (a) the seller is taken to be the ***owner*** of the land until possession of the land is delivered to the buyer; and
>
> (b) the buyer is taken to be the ***owner*** of the land as soon as the buyer obtains possession of the land."

[10] The undisputed facts as set out above clearly establish that the appellants were still in possession of Lot 130 as at 30 June 2004; they did not complete the contract of sale and part with possession thereof until 2 August 2004.

[11] The submission by the appellants was that the land tax assessment covered the period 1 July 2004 to 30 June 2005 and they were not the owners of Lot 130 throughout the whole of that period, and therefore they were not liable to be assessed for land tax with respect to Lot 130. That was said to vitiate the assessments.

[12] That submission must be rejected given the wording of s 12 of the Act. If property on which land tax has been paid is sold during the currency of the taxation year then ordinarily there would be some adjustment as between vendor and purchaser on settlement. But so far as the respondent is concerned the tax is levied on the owner of the land as at midnight on 30 June in each year.

[13] The appellants sought to gain support for their submission from the decision of the Full Court in *Spinks v Commissioner of Land Tax* [1963] QWN 37. In that case a large parcel of land was being subdivided into smaller allotments. A number of allotments were sold, and the purchasers entered into possession, prior to the relevant survey plan being registered in the Titles Office and separate titles issued for the lands so conveyed. The question was who was the owner for purposes of land tax as at 30 June of the relevant year. The court held that the facts that the plan of survey had not been registered and new titles had not issued were not decisive, as the purchasers had taken possession of the land. As was said by Mack J in delivering the judgment of the court: "In my opinion the seller ceases to be the owner for the purposes of tax as soon as he gives possession to the purchaser." That clearly follows from the definition quoted above. But it does not avail the appellants here. The fact that the purchaser from the appellants became the owner of Lot 130 from 2 August 2004 when possession was given does not affect the liability of the appellants to pay land tax as being the owners of Lot 130 on 30 June 2004. That liability stems from s 12 of the Act.

[14] In contending that the notices of assessment were not enforceable, either because the relevant notices of valuation had not been received or because the appellants

ceased to be the owners of Lot 130, the appellants relied on the "Wednesbury principle" (*Associated Provincial Picture Houses Limited v Wednesbury Corporation* [1948] 1 KB 223). Referring to that decision the appellants submitted that a public authority, such as the respondent here, could not act arbitrarily, irrationally or unreasonably in exercising a power conferred on the authority by statute. Without deciding whether the "Wednesbury principle" applies to the respondent, it is sufficient to say that on the evidence the respondent has merely applied the provisions of the Act to the circumstances of the appellants, and has not acted arbitrarily, irrationally or unreasonably in so doing.

[15] The appellants also referred to the Court to the decision of this Court in *Australian and Overseas Telecommunications Corporation Limited v Commissioner for Land Tax* [1994] 2 Qd R 350. I cannot see that the decision assists the appellants in any way. If anything it is against them, because it confirms that liability to pay land tax is determined as at midnight on 30 June in the relevant year. The reasoning therein (especially at 360) confirms that the liability to pay land tax is derived directly from the statute.

[16] The next matter raised by the appellants concerned the tax rate applied and the calculation of the tax payable. The contention essentially was that, if the appellants succeeded on either of the grounds referred to above, the assessment would need to be adjusted. So much can be conceded, but, as the principal arguments of the appellants fail, the assessments stand.

[17] The last point raised by the appellants was that they were denied natural justice in that the initial appeal in the Land Court was dismissed in their absence.

[18] The material discloses that the appellants were given notice of the date fixed for the hearing of the appeal by letter dated 8 July 2005. In a letter to the Registrar dated 10 August 2005 the appellants confirmed that they had been told there was to be a hearing on 22 August 2005. That letter requested that the hearing be deferred. There was a reply from Crown Law dated 18 August 2005 in which it was stated that any application for adjournment would be strenuously opposed and that the respondent would be seeking a dismissal of the appeal. That letter was received by the appellants because they responded acknowledging receipt of it. There was then no appearance by the appellants when the matter was called on in the Land Court on 22 August 2005.

[19] In the circumstances it is difficult to conclude that there was any denial of natural justice. The appellants were given every opportunity to be present and it was their own decision not to appear on that date. But, if what transpired on 22 August 2005 did constitute a denial of a fair hearing, that was remedied by what took place when the appellants appealed to the Land Appeal Court. In that court the appellants were given every opportunity of raising any matter in support of their contention that the notices of assessment were in some way bad and therefore unenforceable. All issues raised by the appellants were then dealt with in the reasons for judgment of the Land Appeal Court delivered on 14 September 2006.

[20] Further, this Court gave the appellants every opportunity of raising any arguments in law which went to the validity or enforceability of the notices of assessment. The appellants have not demonstrated that by not having a hearing in the Land Court they have been in any way prejudiced.

[21] In this Court the appellants did take issue with the fact that in the Land Court the respondent read and relied upon an affidavit of Paula Freeleagus which had not been served on them. However, all that affidavit did was place relevant correspondence between the appellants and the respondent as to the hearing in the Land Court before that court. That in no way adversely affected the appellants' position with respect to submissions as to validity of the assessments.

[22] In support of the submission they were denied natural justice the appellants referred to the decision of Lord Widgery CJ in *R v Thames Magistrates' Court; ex parte Polemis* [1974] 2 All ER 1219. There it was said at 1223 that where there had been a denial of natural justice resulting in an order being made, it was no answer to an application to have that order set aside that there was no merit in the applicant's case. That is undoubtedly correct, but it is not the position here. The order said to have been made in breach of the principles of natural justice was that the appeal of the appellants be dismissed. But since then the issues the appellants sought to raise at that hearing have been aired before the Land Appeal Court and in this Court and it cannot be said that the merits of the appeal have not been fully and properly explored.

[23] Against all of that background leave to appeal should be granted but the appeal should be dismissed with costs.

[24] **MACKENZIE J:** I agree, for the reasons given by Williams JA, that leave to appeal be granted but the appeal should be dismissed with costs.

[25] **MUIR J:** I agree with the reasons of Williams JA and with his proposed orders.