

(Translation)

IN THE APPEAL BOARD UNDER THE
URBAN RENEWAL AUTHORITY ORDINANCE

Appeal Case No. 1 of 2013

IN THE MATTER OF Urban
Renewal Authority Development
Project at Tonkin Street/Fuk Wing
Street, Sham Shui Po (SSP-015)

BETWEEN

WONG Wai Tak (transliteration) (黃惠德) Appellant

AND

Secretary for Development Respondent

Appeal Board : Mr IP Tak-kong (Chairman)
Mr CHAN Hok-fung (Member)
Dr POON Wing-cheung, Lawrence (Member)
Ms POON Wing-yin, Peggy (Member)
Professor TANG Bo-sin (Member)

In attendance : Mr CHENG Chi-tat, Jack (Secretary)

Representation : Ms Pandora CHUNG (鍾佩芬) for the Appellant

Mr Stanley NG Cheuk-kwan (Counsel), Mr Samuel LEE
Chiu-ting (Senior Government Counsel) and Ms Simone LEUNG
Lai-sum (Government Counsel) for the Respondent

Date of Hearing : 17 February 2014

Date of Decision : 11 July 2014

DECISION

1. On 8 March 2013, notification was given by the Urban Renewal Authority (“**URA**”) that pursuant to section 23(1) of the Urban Renewal Authority Ordinance (Chapter 563) (“**the Ordinance**”), the URA would commence the development project SSP-015 at Tonkin Street/Fuk Wing Street (“**the Project**”). The Project will be implemented under section 26 of the Ordinance, i.e. will accord with the Town Planning Ordinance. The Project covers an area of about 1 268 square metres, and the affected buildings within the project boundary were completed between 1955 and 1958 with a range of building height from 5 to 7 storeys.
2. The Appellant resides in a building affected by the Project at No. 26 Tonkin Street. On 7 May 2013, she wrote to the URA to raise objection against the acquisition pertaining to the Project on the grounds that while she wished to improve her living environment, she was worried that she might not be entitled to a reasonable compensation in the capacity of a property owner because her family had not properly addressed the issue concerning the ownership of the property years ago. The Appellant stated clearly in her objection letter that if the URA agreed that the Appellant was the sole owner of the property, she would be willing to accept the reasonable (Flat-for-Flat) compensation arrangement; otherwise, she would raise objection against the Project and refuse to move out of the property in which she has been residing for more than 50 years.
3. After consideration and deliberation, the URA decided not to make an amendment to the Project in the light of the objection raised by the Appellant. On 5 July 2013, the URA submitted all the documents relating to the Project, including the objection of the Appellant, to the Respondent for consideration under section 24(3) of the Ordinance.

4. On 13 November 2013, the Respondent decided to authorize the URA to proceed with the Project without any amendments (“the Decision”). The Decision was gazetted on 22 November 2013.
5. On 23 December 2013, the Appellant lodged a notice of appeal against the Decision under section 28(1) of the Ordinance. The Appellant’s grounds of appeal were that the Decision would indubitably affect her health and bring countless troubles to her. She also indicated in the letter attached that she was already in her old age and she lacked the health, ability and financial capacity to act in line with the Decision. A year ago, the Appellant had stayed in the intensive care unit of a hospital for a long period of time because she was very ill. She only wants to have a home where she could live peacefully.
6. The Respondent’s grounds of opposing the appeal of the Appellant may be summarised into the following two points:-
 - (1) Regarding the question on whether the Appellant is entitled to a reasonable compensation arising from the ownership dispute, the Appellant should make her claim to the court through proper legal channel so as to establish her ownership of the property. The Respondent and/or the URA do/does not have the right nor responsibility to make a decision on ownership dispute at all;
 - (2) Regarding the health and ability issues raised by the Appellant, even if the Appellant fails to prove that she is the owner of the property but rather, only a legal occupier thereof, the URA will still offer ex-gratia payment to the Appellant in accordance with policy. If the Appellant meets the eligibility criteria, she will be offered re-housing arrangement in lieu of ex-gratia payment. In addition, the urban renewal social service team (“SST”) will provide service to the persons affected by the Project and hence alleviate the distress that the Appellant may face.
7. The hearing was conducted on 17 February 2014. As required by section 28(5) of the Ordinance, the Respondent submitted the witness statements signed respectively by Mr. WONG Chi-man, Senior Manager of Planning and Design of the URA, and Mr. WONG Wai-kuen, Director of Acquisition

and Clearance of the URA. The witness statements basically provide the information disclosed in the relevant documents. As for the Appellant, she did not submit any witness statements. However, at the hearing, both parties agreed that it was not necessary to call witness to give evidence as there was no dispute of facts in respect of this appeal case.

8. The Appellant was absent from the hearing and was represented by her daughter, Ms CHUNG. In his submission made on behalf of the Respondent, Mr NG pointed out that the condition of most of the buildings affected by the Project was graded poor, and it could be seen from the photographs that concrete of the building external walls were spalling off and reinforcement steels had become exposed to the air, and the problem of illegal structures and sub-divided units was very serious. In response, Ms CHUNG said that these photographs did not reflect the condition of the property in which the Appellant was residing. However, Ms CHUNG did agree that the problems of the buildings as shown in the photographs needed to be addressed. In fact, Ms CHUNG has tried to explain to the Appellant the needs for development in the community. However, the Appellant having been residing in the property for more than 50 years, coupled with her health problem, she has all along been unable to adapt to the tremendous changes brought about by the Project.
9. This Appeal Board understands that it is indeed difficult for elderly people to adapt to the fact that because of the Project, they have to move out of the flats in which they have been residing for more than 50 years. However, the Appellant's personal choice and the difficulties she encountered in this respect should not override the overall benefits brought to the other affected owners and tenants, as well as the whole community at large. Furthermore, the Appellant lives on the fourth floor of a building without a lift. Considering the Appellant's health condition, she may need to attend follow-up medical appointments at hospitals or clinics. It is questionable whether the current premises is still a suitable living place for her. In any event, there is quite a long lead time between the implementation of the Project and the time when the Appellant will be required to move out. In the meantime, this Appeal Board hopes that the SST will approach the Appellant and Ms CHUNG or the Appellant's other family members to provide her with help as far as possible, so as to alleviate the distress thus caused to the Appellant.

10. As for the issue of property ownership dispute mentioned in the objection letter submitted by the Appellant, although the Appellant claimed that all the matters would be handed over to the lawyer, Ms CHUNG clarified at the hearing that owing to the high cost charged by the lawyer, the Appellant had not taken any legal actions with respect to the ownership dispute so far. As far as this issue is concerned, this Appeal Board agrees with the Respondent that neither the URA nor the Respondent is authorized under the law to make decisions on the issue of property ownership. Likewise, this Appeal Board also has no power in this regard. Under such circumstances, the issue of ownership raised by the Appellant will never be resolved.
11. Moreover, what the ownership dispute leads to is the question of compensation for land resumption. If the URA needs to invoke the Lands Resumption Ordinance (Cap 124) to resume land for this Project, the Appellant shall be granted with a compensation she is entitled to (if any) according to the provisions of the Lands Resumption Ordinance. In other words, there is no direct relationship between the land resumption compensation and whether the Project should be carried out. Similar viewpoints were mentioned in a previous appeal case, i.e. Appeal Cases Nos. 1 and 4 of 2011 (please see paragraphs 7 to 8 of the decision in those cases).
12. On the basis of the foregoing reasons, this Appeal Board considers that it would not be appropriate to reverse the Decision to meet the objections and/or reasons of appeal raised by the Appellant.
13. Regarding whether amendments should be made to the Project to exclude the unit of the Appellant from the Project, since the Appellant lives in a strata unit, obviously it is not feasible to exclude her unit. The Appellant has not made such a request either.
14. In consideration of all the matters relevant to the appeal, including those mentioned above, this Appeal Board unanimously considers that it is appropriate to dismiss the appeal and pursuant to section 28(14) of the Ordinance, the Decision is confirmed.
15. The Appeal Board decides not to make any order in respect of the costs and expenses incurred by the appeal.

Mr IP Tak-kong
(Chairman)

Mr CHAN Hok-fung
(Member)

Dr POON Wing-cheung, Lawrence
(Member)

Ms POON Wing-yin, Peggy
(Member)

Professor TANG Bo-sin
(Member)

(If there is any discrepancy between the original decision in Chinese and the English translation, the Chinese original shall prevail.)