IN THE APPEAL BOARD UNDER THE

URBAN RENEWAL AUTHORITY ORDINANCE

Appeal Cases Nos. 2-5 of 2013

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

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BETWEEN

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| TAM Ho Yin | 1st Appellant |
| CHIU Wai Lam | 2nd Appellant |
| TAM Ho Kwong | 3rd Appellant |
| TAM Lai Ha | 4th Appellant |

AND

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| Secretary for Development | Respondent |

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| 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 : Mr Mike LUI (Counsel) instructed by Messrs Bobby Tse & Co for the Appellants

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 : 19 February and 12 May 2014

Date of Decision : 11 July 2014

# D E C I S I O N

## Background

1. On 8 March 2013, by Gazette Notice No.1211, notification was given by Urban Renewal Authority ("**URA**") that pursuant to section 23(1) of the Urban Renewal Authority Ordinance ("**the Ordinance**"), URA would commence the implementation of its project SSP-015 at Nos.24-38 Tonkin Street / Nos.240-240A, 242-244 Fuk Wing Street (even numbers only), Sham Shui Po ("**the Project**") by way of a development project under section 26 of the Ordinance.

2. One objection to the Project (made by the Appellant in Case No.1 of 2013) was received by URA within the 2-month publication period in accordance with section 24(1) of the Ordinance. This objection was considered and assessed by URA and on 5 July 2013, URA submitted the Project and other information as required under section 24(3) of the Ordinance to the Respondent for his consideration.

3. Subsequently, by letter dated 11 July 2013, the Appellants wrote to the Respondent to raise objection to the Project. It was said in the letter that the Appellants had started acquiring the premises at the site covered by the Project since January 2013 for the purpose of redevelopment and managed to sign a total of 14 sale and purchase agreements with 4 of them already completed. Acquisition stopped in February due to the Chinese New Year and after the notification given by URA in March, they were unable to proceed with further acquisition since the notification had caused the other owners to adopt a wait-and-see attitude. The Appellants considered that URA's intervention was most untimely and urged the Respondent to make a decision to suit the situation. They expressed their willingness to give an undertaking to notify

the Respondent of their decision to withdraw from the intended redevelopment if they were unable to acquire within a reasonable time a sufficient number of the remaining premises so as to fulfil the statutory requirement provided in Land (Compulsory Sale for Redevelopment) Ordinance whereby URA could then take steps to reactivate the Project.

4. By a further letter dated 25 September 2013, the Appellants informed the Respondent that the agreements for the sale and purchase of the remaining 10 units had also been completed in July 2013.

5. At about the same time, by letter dated 24 September 2013, URA advised the Respondent that the Appellants' objection was submitted out of time and not in compliance with the relevant requirement of section 24(1) of the Ordinance. It was therefore not considered by URA. This letter was copied to the Appellants under cover of the Respondent's letter dated 15 October 2013 in which the Appellants were requested to give their comments on the advice given by URA in writing by 22 October 2013 should they wish to do so.

6. In the Appellants' reply letter dated 22 October 2013, the Appellants did not address the point made by URA that their objection was out of time. Instead, they expressed the hope that the Respondent and URA would consider their objection from a new perspective in that the Appellants' participation in the intended redevelopment would indeed assist URA in speeding up the pace of urban renewal.

7. Afterwards, on 13 November 2013, pursuant to section 24(4)(a) of the Ordinance, the Respondent decided to authorize URA to proceed with the Project without any amendment ("**the Decision**"). Notification of this authorization was published in Gazette Notice No.6880 dated 22 November 2013 and the Appellants were also informed of the Decision by letter of the same date in which it was stated that since the Appellants' objection was not submitted within the publication period stipulated in section 23(1) of the Ordinance, the Respondent had decided that their objection did not fall within section 24(1) of the Ordinance.

**Grounds of Appeal**

8. On 20 December 2013, the Appellants lodged their notices of appeal against the Decision. Their grounds of appeal may be summarized as follows :-

(1) The Respondent was in error when he made the Decision without considering the Appellants' objection since section 24(4) of the Ordinance requires the Respondent to consider any objections which are not withdrawn but it does not preclude the Respondent from considering any objections which are received after the publication period and in any event before the Respondent makes his decision under the sub-section. The Decision was made consequent upon the Respondent's commission of an error of law and further it is unfair and unreasonable due to his failure to take into account a relevant consideration, namely, the Appellants' objection.

(2) In any event, the Decision ought to be reversed because the Appellants are ready and willing to redevelop the site covered by the Project, whether by themselves or together with other investors.

**Grounds of Opposing the Appeal**

9. As to the Respondent's grounds of opposing the appeal, they may be summarized as follows :-

(1) The Appellants' objection by letter dated 11 July 2013 was not submitted within the 2-month publication period which expired on 8 May 2013. Accordingly, the Appellants' objection was not in compliance with the requirements of section 24(1) of the Ordinance.

(2) Nevertheless, although the Appellants' objection was out of time, the Respondent did consider the objection in the Appellants' letter dated 11 July 2013 and therefore in coming to the Decision, the Respondent did not omit to consider any relevant information, including the Appellants' objection.

(3) Under section 29(2)(b) of the Ordinance, URA has to apply to the Respondent to request recommendation to the Chief Executive in Council for necessary resumption in relation to the Project within 12 months after the Respondent's authorization for the Project to proceed and accordingly, comparatively speaking, URA's redevelopment has a clearer and more definite plan and timetable which will not be affected by market conditions.

(4) According to URA's prevailing policy, URA will select a suitable party from the private sector to participate in the joint redevelopment of the Project and the Appellants may submit their application at that time.

**The Issues**

10. There are 2 broad issues arisen in these appeal cases :-

(1) whether by reason of the fact that the Appellants' objection was not submitted within the 2-month publication period in compliance with the requirements under section 24(1) of the Ordinance, there is no *locus standi* for the Appellants to lodge the present appeals pursuant to section 28(1) of the Ordinance;

(2) if the Appellants have *locus*, whether the Decision ought to be reversed on merits.

**Witnesses and Evidence**

11. Witness statements and other documents were lodged by the Appellants and the Respondent respectively prior to the hearing on 19 February 2014 as required by section 28(5) of the Ordinance. However, in the course of opening at the hearing, Mr Lui, appearing on behalf of the Appellants, sought to rely on new materials including a press report concerning URA's withdrawal from a project for the redevelopment of an industrial building in relation to which the then Chairman of URA was quoted as having said in effect that after URA's

announcement, there were acquisitions by private developers of interests in the industrial building and the announcement itself served the purpose of promoting the redevelopment of the industrial building without any need for URA to compete with the private developers. Upon objection and application by Mr Ng on behalf of the Respondent, the hearing on 19 February 2014 was adjourned to enable the parties to lodge supplemental witness statements to deal with the new materials.

12. The hearing resumed on 12 May 2014. We heard the parties' submissions on the *locus* issue first. To save time and costs, we proceeded to hear the evidence from the witnesses reserving our decision on the *locus* issue. The first witness called by the Appellants is Mr Denys Kwan, a director of CS Surveyors Ltd. He had prepared a report dated 11 February 2014 in which he estimated the total current costs for acquiring the remaining premises by the Appellants to be about HK$444 million. He also gave an estimate in the region of HK$321 million for the costs of demolition of the existing buildings and construction of the proposed new building. In other words, according to Mr Kwan's opinion, the total costs required to be incurred by the Appellants to complete their proposed redevelopment would amount to about HK$765 million.

13. The other witness called by the Appellants is Mr Chan Lik Wai (transliteration). Mr Chan is an independent consultant on property project development. In his witness statement dated 10 February 2014, Mr Chan referred to how he came to learn about a redevelopment plan for Nos.24-28 Tonkin Street and Nos.240-240A and 242-244 Fuk Wing Street drawn up by Tsang Suen Kee Groups Ltd. ("**TSK**") in September 2012. TSK was looking for buyers. The 1st Appellant was very enthusiastic in his response to this plan and appointed Mr Chan to proceed with the necessary acquisition. It was very successful and in January 2013 alone, through the assistance of TSK and another estate agent, 14 binding provisional agreements were signed at an average price of HK$7,300/ft$^2$, which was about 10% above the market price of HK$5,500-6,500/ft$^2$. However, after URA's announcement in March 2013, some of the owners changed their minds and raised the acquisition price from

HK$7,300/ft$^2$ to HK$11,000/ft$^2$ and the majority even refused to further negotiate, preferring to wait for the offer from URA. Mr Chan thought that the price to be offered by URA would not be less than HK$10,000/ft$^2$.

14. Apart from the evidence from the witnesses above referred to, the Appellants also produced copies of various documents including the following in support of their case :-

(1) the brochure of the redevelopment plan drawn up by TSK;
(2) the consultancy agreement dated 15 November 2012 entered into between the 1st Appellant and Mr Chan;
(3) a memorandum of intent to co-operate dated 21 August 2013 entered into by the 1st Appellant and a company with a registered address in Guangzhou, PRC ("**the Guangzhou Company**") in connection of the redevelopment project at the site covered by the Project;
(4) a bank reference letter dated 11 February 2014 issued by Bank of China (HK) Ltd ("**the Bank**") at the request of Tat Yeung Holdings Limited ("**Tat Yeung**") stating that as of 10 February 2014 Tat Yeung, holding the shares in the Guangzhou Company, had credit facilities up to the amount of HK$610 million;
(5) a letter dated 3 March 2014 confirming that Tat Yeung would utilize the credit facilities from the Bank to support the redevelopment project by the Guangzhou Company.

15. As to the witnesses called by the Respondent, the first one is Mr Wong Chi Man (transliteration). Mr Wong was Senior Planning and Design Manager employed by URA. He gave an account of the communications between URA and the Respondent leading to the Decision and in his supplemental witness statement dated 18 March 2014, he explained the benefits that would be gained by URA's redevelopment, particularly to the tenants in excess of 85 households equivalent to about 69% of the households residing in the old and dilapidated buildings covered by the Project. This is so because under URA's policy, ex-gratia payments or in lieu thereof, rehousing in public housing (should the tenants so qualify) would be offered to such tenants.

16. The second witness called by the Respondent is Mr Ma Chiu Chi (transliteration) also employed by URA. According to Mr Ma, information regarding URA's intention to implement any redevelopment project is confidential and before its public announcement, URA would never communicate with the registered owners nor to consult them as to their intention to make further acquisition for redevelopment purpose. However, before announcement, it is URA's common practice to make an updated land search and in relation to this Project, upon analysis, it was noticed that only in respect of the premises at No.244, Fuk Wing Street was there a higher chance of the registered owners acquiring more than 50% of the undivided shares in the title of the premises concerned. It is not suitable for separate redevelopment on its own. Further, it occupies a core position in the site and to excise this area would diminish the planning benefits from the Project. Accordingly URA decided to go ahead with the Project as originally planned.

17. The last witness called by the Respondent is Mr Chow Man Hong (transliteration) from Development Bureau. He produced the minute in which he set out the reasons why he recommended the Respondent to authorize URA to proceed with the Project without any amendment despite the "*belated objection*" by the Appellants. As shown in the minute, the Respondent expressed his agreement to Mr Chow's recommendation. Mr Chow also made a supplemental witness statement in response to various matters raised by Mr Lui at the hearing on 19 February 2014.

## **Discussion**

### ***Locus***

18. For ease of reference, we set out in full the entire section 24 of the Ordinance :-

> "*(1) Any person who considers that he will be affected by a project to be implemented by way of a development project under section 26 referred to in a notice published under section 23(1) and who wishes*

*to object to the implementation of the development project may, within the publication period, send to the Authority a written statement of his objections to the project.*

*(2) The written statement mentioned in subsection (1) shall set out :-*

*(a) the nature and reasons for the objection;*
*(b) where the objection would be removed by an amendment of the development project any amendment proposed.*

*(3) The Authority shall consider all objections and shall, not later than 3 months after the expiration of the publication period, submit :-*

*(a) the development project;*
*(b) the Authority's deliberations on the objections;*
*(c) any objections which are not withdrawn; and*
*(d) an assessment by the Authority as to the likely effect of the implementation of the development project including, in relation to the residential accommodation of persons who will be displaced by the implementation of the development project, an assessment as to whether or not, insofar as suitable residential accommodation for such persons does not already exist, arrangements can be made for the provision of such residential accommodation in advance of any such displacement which will result as the development project is implemented.*

*to the Secretary for his consideration.*

*(4) The Secretary shall consider the development project and any objections which are not withdrawn and determine, consequent upon those objections, whether :-*

*(a) to authorize the Authority to proceed with the development project without any amendment;*

*(b) to make an amendment to the development project to meet an objection raised under subsection (1); or*

*(c) to decline to authorize the development project.*

*(5) The Secretary may authorize the Authority to proceed with the development project if after the expiration of the publication period no objections have been lodged.*

*(6) Where the Secretary makes an amendment to a development project under subsection (4)(b) to meet an objection raised under subsection (1), he shall order the Authority to publish in the Gazette notice of the amendment to the development project. Where the amendment appears to the Secretary to affect any land, other than that of the objector, the Secretary shall serve notice in writing of that amendment on the owner of that other land or give such other notice by advertisement or otherwise as he deems desirable and practicable to the owner of that other land to inform that owner of the amendment.*

*(7) The owner of the other land mentioned in subsection (6) who wishes to object to the amendment made by the Secretary under subsection (4)(b) shall send to the Secretary a written statement of that objection within :-*

*(a) 14 days in the case of an owner of the land included in the original development project submitted to the Secretary under subsection (3); or*

*(b) 2 months in the case of an owner of the land affected by the amendment made by the Secretary under subsection (4)(b) and not included in the original development project submitted to the Secretary under subsection (3),*

*after the service or giving of notice by the Secretary under subsection (6). The Secretary shall consider the written statement to determine, in view of that objection, whether to authorize the Authority to proceed with the development project with or without the amendment made by the Secretary or, whether to decline to authorize the development project and shall serve notice in writing of that decision on the owner who made the objection.*

*(8) Where the Secretary makes an amendment to a development project under subsection (4)(b) with amendments which include an expansion of the boundaries of the project, the commencement date of the implementation of the part of the project concerning the land not included in the original development project submitted to the Secretary under subsection (3) shall be the date when notice was published in the Gazette under subsection (6). The commencement date of the implementation of the part of the project concerning the land included in the original development project submitted to the Secretary under subsection (3) shall remain as provided under section 23(2).*

*(9) Where the Secretary authorizes the Authority to proceed with a development project under subsection (4)(a) or (7), as the case may be, with or without amendments, he shall order the Authority to publish in the Gazette notice of authorization of the project, together with a summary of the information of the description mentioned in section 23(3)(a) and (b) concerning the project as authorized by the Secretary. The Authority shall, upon request made to it by any person in that behalf, make available for inspection information of the description mentioned in section 23(3)(a) and (b) concerning the authorized project.*

*(10) Where the Secretary declines to authorize a development project under subsection (4)(c) or (7), he shall order the Authority to publish in the Gazette notice of withdrawal of the project. The Authority*

*shall serve notice in writing of that decision on the owner of the land or give such other notice by advertisement or otherwise as the Authority deems desirable and practicable to the owner of the land to inform that owner of the decision. Any such withdrawal shall be without prejudice to the preparation of a new project and the publication thereof under section 23.* "

19. There is no dispute that the Appellants' objection was not sent to URA within the publication period stipulated in section 24(1). Does it follow that the Appellants are not objectors within the meaning of section 28(1) which provides :-

"*An objector to a development project who is aggrieved by a decision of the Secretary under section 24(4)(a) or (7) may appeal by lodging a notice of appeal with the secretary to the Appeal Board panel, with a copy to the Secretary, within 30 days after notification of the Secretary's decision under section 24(9)*"?

20. In the context, it is obvious that "*[an] objector to a development project who is aggrieved*" is not meant to include any person who is aggrieved and objects to the development project. That person must be a person who has lodged an objection under the elaborate scheme of dealing with objections as provided in section 24 of the Ordinance. In other words, whether the Appellants have *locus* to lodge the present appeals will depend on whether their objection ought to be treated as one made under the statutory regime despite the fact that their objection was lodged out of time.

21. According to Mr Ng's submission, section 24(4)(a) refers to any "*objections*" not withdrawn and the "*objections*" in that subsection is clearly a reference to the "*objections*" lodged under section 24(1). It follows (as Mr Ng submitted) that an "*objector*" aggrieved by a decision of the Respondent under section 24(4)(a) for the purpose of section 28(1) must be a reference to a person who has lodged an objection in accordance with section 24(1). Notwithstanding the use of the word "*may*" in section 24(1), Mr Ng urged this Board to construe

the provision as imposing mandatory and imperative requirements both as to the time in lodging the objection and the form of the objection. In support of such proposition, he referred to the Court's decision in *Kwan Kong Co., Ltd v Town Planning Board* [1995] 3 HKC 254 (at first instance) and [1996] 2 HKLR 363 (CA) dealing with the former section 6 of the Town Planning Ordinance which had some similarity in the wording as we have in section 24(1) and (2) of the Ordinance. Another case which Mr Ng sought to rely on is *Tai Tung Industrial Equipment Ltd v Director of Lands* [1995] 2 HKC 705, a decision on the statutory scheme of claiming compensation under the Foreshore and Sea-bed (Reclamation) Ordinance.

22. Mr Ng further submitted that the Respondent's interpretation makes sense in the overall scheme of the objection and appeal mechanism under the Ordinance. If no valid objection had ever been made and the Respondent would not have had the occasion to consider it on an informed basis, it would be unfair to the Respondent if his decision were to be challenged on appeal.

23. In considering the relevance of the authorities relied on by the Respondent, Mr Lui drew our attention to the following dictum in the judgment of Godfrey JA in the *Tai Tung* case, at 716C :-

> "*… it is always dangerous to reason from the words of one legislative provision to the words of another when construing the latter…*"

24. He further submitted that the Court's decision in *Tai Tung* is distinguishable in that the word "*shall*" was used in the statutory provision considered by the Court in that case and this is to be contrasted with the word "*may*" appearing in section 24(1) of the Ordinance. As to the Court's decision in *Kwan Kong*, he emphasized that apart from holding that Town Planning Board ("**TPB**"), the respondent in that case, had no statutory duty to consider the applicant's new rezoning proposal which only came into being nearly one year after the exhibition of the draft plan and was thus far out of time, the Court recognized that TPB had a discretion to consider it though it was held that TPB's refusal to do so was not *Wednesbury* unreasonable. In this regard, *Kwan Kong* appears

to lend support to the interpretation of section 24 of the Ordinance advocated by Mr Lui on which he made 4 points :-

(1) There is no express provision in section 24 which precludes the Respondent from considering any objections which have not been submitted in compliance with the requirements of subsection (1) (as to time) and subsection (2) (as to contents) though, as accepted by Mr Lui, the Respondent has no statutory duty to do so.

(2) The word "*may*" is used in subsection (1) which is permissive.

(3) The imperative wording used in subsections (6) and (7) indicates that the legislature must be aware of the difference between "*may*" and "*shall*" and that the adoption of the permissive wording in subsection (1) was intentional.

(4) The permissive wording in subsection (1) is not there for no purpose: it serves the purpose of obliging URA and the Respondent to consider all outstanding objections lodged within time no matter how unmeritorious the objections might be. Conversely, any person who does not lodge his or her objection within time will have no right to insist that his or her objection must be considered by URA or the Respondent. Whether URA or the Respondent should consider such objection is another question which is a matter subject to their discretion.

25. We are inclined to accept Mr Lui's submission on the interpretation of section 24 of the Ordinance. In the judgment of Litton VP in the Court of Appeal's decision in <u>*Kwan Kong*</u>, he stated (at page 372) :-

> "*In my judgment the requirements of s.6(2) are imperative, not directory and the board was right to disregard the new proposal put forward by counsel at the hearing. The judge's conclusion on this issue cannot be faulted*"

One must not confuse the requirements relating to the contents of the written statement under s.6(2) in which mandatory wording was used with the requirements relating to the time for the submission of the written statement provided in s.6(1) in which, like section 24(1) of the Ordinance we have to consider, the wording used was permissive.

26. Further, if we assume that the Appellants were so keen on their redevelopment project that they were prepared to acquire the remaining premises at much higher prices and thus managed to buy out all the remaining owners and that there were only a short delay in lodging their objection, following the strict interpretation submitted by Mr Ng, the Appellants must still be denied their right of appeal even in such a situation. We do not think this is in accord with the legislative intent and in our view, there is room for discretion to treat a late objection as one being lodged under the statutory regime where the circumstances so demand.

27. Having said that, we are quite unable to accept Mr Lui's further submission that in these appeal cases, there is no need for us to consider the further question whether the Respondent in exercising his discretion ought to consider the Appellants' objection because on the evidence, the Respondent had in fact considered the Appellants' objection before authorization to proceed with the Project was given. In our view, the mere consideration by the Respondent of the Appellants' objection is insufficient to show that the Respondent had exercised his discretion in favour of the Appellants and treated their objection as one within the statutory regime. Quite to the contrary, as above noted, in responding to the Respondent's letter dated 15 October 2013, the Appellants did not in any way address the point made by URA that their objection was out of time. The Appellants did not request the Respondent to exercise his discretion. They did not even bother to give any explanation as to why they did not lodge their objection within time. In the circumstances, we are satisfied that there was no exercise of discretion by the Respondent even though the Appellants' objection had been considered by the Respondent in coming to the Decision.

28. Mr Lui objected to Mr Ng's submission that the Respondent had considered the Appellants' objection "*without prejudice to the position that there was no need for him to consider the Belated Objection*" on the ground that such submission was made without evidential basis. As we understand it, such submission by Mr Ng was not meant to record the contents of any communication but to reflect his understanding of the situation that whilst on the one hand, the Respondent did not think that he was obliged to consider the Appellants' objection, he did, on the other hand, take the objection into account in coming to the Decision. In our view, this is a fair description of the situation which is not dissimilar to the approach we have adopted in hearing these appeals. We do not think it was incumbent upon the Respondent to make it clear in writing that his consideration of the Appellants' objection was done without prejudice to his primary position that he was not obliged to do so or else he would be taken as having abandoned his primary position.

29. Lastly, Mr Lui submitted that these appeal cases are meant to be conducted on the basis of a *de novo* hearing and we should put ourselves in the position of the Respondent in considering the Appellants' objection. Assuming this to be the correct approach, we still see no basis why we should exercise the discretion in favour of the Appellants. The objective of the Ordinance and the various time limits provided therein are such that clearly URA is required to proceed with its redevelopment projects without undue delay. The Appellants' delay which in itself exceeds the 2-month period allowed for under section 24(1) cannot simply be ignored. There must be compelling reasons to justify such long delay but none has been put forward by the Appellants. In the circumstances, there is simply no or no sufficient material on the basis of which one can begin to argue that as a matter of discretion the Appellants' objection ought to be treated as one made within the statutory regime.

30. Based on the above analysis, our conclusion is that the Appellants have no *locus* in lodging the appeals in these appeal cases.

**Merits**

31. In view of our conclusion on the *locus* issue, strictly speaking, there is no need for us to consider the Appellants' grounds of appeal. However, in case we are wrong on the *locus* issue, we have also considered these grounds of appeal.

32. It is apparent that the Appellants' first ground of appeal was based on a misunderstanding since on the evidence the Respondent did take into account the Appellants' objection in coming to the Decision but the Appellants were not so informed by the Respondent. As shown in the minute produced by Mr Chow, apart from the fact that the Appellants' objection was not made within the time stipulated in section 24(1), the Respondent took into account the following matters in coming to the Decision :-

(1) As confirmed by Buildings Department ("**BD**") there was neither demolition plan nor building plan already submitted to BD in respect of any redevelopment of the site covered by the Project.

(2) Given the time limit provided in the Ordinance for URA to make an application for land resumption within 12 months after the Respondent's authorization, URA would have a clear and certain programme to implement the Project. As to the project of the Appellants who had only 17% of interests in the premises within the site of the Project, the Appellants did not make known what they meant by "*reasonable time*" within which they might call off the project.

(3) If the Appellants were interested to participate in the Project to be implemented by URA and could meet URA's requirements, the Appellants would have the opportunity of taking part in the Project through the joint venture partner approach under URA's prevailing practice.

33. Having regard to the matters taken into account by the Respondent in coming to the Decision, we see nothing unfair or unreasonable in the Decision and we

do not see any merit in the Appellants' first ground of appeal.

34. Turning to the Appellants' second ground of appeal, as we understand it, the gravamen of the Appellants' grievance in these appeal cases is that prior to the announcement made in March 2013, URA ought to have noticed the number of transactions which took place in January 2013 from which URA should have gathered that assembly efforts were already in place for the redevelopment of the site by a private developer but nonetheless URA and the Respondent decided to proceed with the Project whereby all the efforts made in trying to redevelop the site would be wasted. Bearing in mind the role of URA as a "*facilitator*" (as opposed to an "*implementer*") as provided in the Urban Renewal Strategy ("**URS**") adopted in February 2011 which encourages public participation by all stakeholders/participants, including the private sector such as property owners and developers, the Appellants question whether URA and the Respondent's stance in these appeal cases would give rise to the ramification of discouraging such participation from the private sector in future projects. Given the limited resources available to URA, without sufficient participation from the private sector, this is going to slow down the pace of urban renewal and it is questionable whether this accords with the policy behind the URS and the objective of the Ordinance. It was so contended by Mr Lui on behalf of the Appellants.

35. The 14 transactions which took place in January 2013 were registered in the names of the Appellants with no indication they are connected. In our view, such information was not enough for URA to deduce that efforts were being made by a developer to assemble interests in the affected premises for redevelopment purpose. Of course, such information was made known to the URA and the Respondent afterwards before the Decision. However, unlike the case concerning the withdrawal of the redevelopment project of the industrial building in which there were objections from all the owners of the building against URA's redevelopment project, the total percentage of interests assembled by the Appellants remained at about 17%. The facts are so different that in our view how URA and the Respondent reacted to the objections in the other case cannot provide any guidance on how URA and the

Respondent ought to deal with the Appellants' objection in the present case.

36. As to Mr Lui's proposition that the stance taken by URA and the Respondent in these appeal cases would have the consequences of discouraging participation from the private sector, for the following reasons, we are quite unable to accept such proposition :-

(1) The only evidence adduced by the Appellants in support of such proposition is the view expressed by The Real Estate Developers Association of Hong Kong ("**the Association**") in giving their comments on the review of the URS back in November 2010 in which it was said : "*Where the private sector has already amalgamated major landed interests, proper respect must be paid to the land assembly effort undertaken by the private sector over the years and it is unfair for the URA to resume the entire area. Such action will discourage the private sector from undertaking urban renewal projects as the URA may at any time declare those projects as renewal projects and thereby quashing all the time and efforts invested by the private sector.*"

(2) Same as the Appellants' proposition, there was no reference to any empirical data in support of such view expressed by the Association. The proposition that URA's action would discourage participation from the private sector remains a hypothesis yet to be tested.

(3) Analyzing the question purely on a theoretical basis, bearing in mind the higher prices offered by URA, the land assembly efforts undertaken by a private developer will not go unrewarded. In other words, the action by URA is only a calculated risk that may potentially reduce the amount of profit that may be generated from the intended redevelopment project contemplated by the private developer. Viewed from such perspective, not only will URA's action not discourage participation from the private sector, arguably it may even provide an incentive for the private developers to speed up their projects in order to minimize the risks of the projects being overtaken by URA before maturity and to maximize

the gains to be made from the projects.

(4) Indeed, there is not even evidence adduced by the Appellants themselves nor suggestion made by Mr Lui that as a result of URA's intervention in these appeal cases, they have completely lost their interests in this area of business and will cease any participation in future urban renewal projects unless the Decision is reversed.

(5) Lastly, there is this further consideration of URA's prevailing policy of inviting the private sector to participate in the joint redevelopment of URA's projects. We are not sure whether under this policy, priority will be given to a suitable private developer who is interested and has acquired significant interests in the premises affected but if so, this should give a further incentive to encourage participation from the private sector to initiate urban renewal projects.

37. The discouragement argument aside, it is obvious that public interest is better served for URA to proceed with the Project even if the Appellants are ready and willing to redevelop the site covered by the Project :-

(1) Whilst Mr Lui at the hearing on 19 February 2014 appeared to suggest that because of certain repair works being undertaken at the premises, there was no urgency for URA to proceed with the Project, at the resumed hearing on 12 May 2014, he accepted that the conditions of the premises are such that there is in fact an urgent need for the redevelopment of the site to be proceeded with.

(2) Given the urgency for the implementation of the Project, such need for redevelopment can certainly be met by URA with a clearer redevelopment timetable unaffected by changes in the market conditions. Whilst Mr Chan asserted that the Appellants could move faster than URA, this is not borne out by the absence of any concrete redevelopment plan other than that set out in the brochure drawn up by TSK which is inadequate. Indeed, the undertaking offered by the

Appellants to notify the Respondent of their decision to withdraw from the intended redevelopment clearly shows the Appellants' recognition of the uncertainty as to whether they will be able to get to the stage of acquiring sufficient number of the premises in the first place.

(3) The provision by URA of ex-gratia payments or rehousing arrangement as well as information and support to the affected tenants is another factor which clearly weighs in favour of URA.

38. Whilst it is inevitable that a comparison has to be made between the Project to be implemented by URA and the redevelopment plan contemplated by the Appellants, it is not appropriate to view such an exercise as a competition between the URA and the Appellants with the result that the loser would be ousted from the arena. There is no question of whether such competition is fair or not. The important consideration is simply whether public interest is better served for URA to implement the Project. Apart from the matters considered above, there is also this question of better utilization of resources. As pointed out by Mr Lui, URA does not have unlimited resources to enable it to handle all urban renewal projects. Similarly, the Appellants' financial capability is also limited. To stop the Project by URA will not only result in the wastage of URA's resources already incurred in preparing for the Project, including the costs of conducting the freezing surveys to ascertain the persons who were residing at the affected premises at the time of announcement but also the further costs to be incurred by the Appellants in trying to acquire more premises required for their redevelopment plan which may turn out to be abortive. There is no reason why the Appellants cannot divert their available resources to other projects and in so doing, it is likely to result in more efficient utilization of available resources overall to the benefit of the community at large.

39. In view of the foregoing, even if we were to accept the Appellants' assertion that they are ready and willing to redevelop the site, we do not think that because of this, the Decision ought to be reversed.

40. We have hesitation to accept the assertion that the Appellants are ready and willing to redevelop the site because the evidence adduced by the Appellants is far from sufficient to enable us to draw such a conclusion despite the fact that the evidence from their witnesses was not subject to serious challenge by the Respondent. The Appellants chose not to give evidence by themselves and little is known about their background other than the fact that apparently the 1st, 3rd and 4th Appellants are siblings and that the 2nd Appellant is their friend. There is no clear evidence as to their experience in property development. Neither is there evidence as to the experience of the Guangzhou Company and/or Tat Yeung in property development. Whilst we do not doubt the Appellants' enthusiasm and willingness to engage in the redevelopment of the site, in the absence of evidence showing that the parties involved have the necessary skill and experience, we do not think it can be said that the Appellants are ready to do so.

41. It follows therefore that in our view, there is neither any merit in the Appellants' second ground of appeal.

**Conclusion**

42. For the reasons set out in the foregoing, we conclude that the Appellants' appeals ought to be dismissed and pursuant to section 28(14)(a) of the Ordinance, we decide to confirm the Decision.

43. Although the appeals are dismissed, we are not satisfied that it is reasonable and just to require the Appellants to bear the costs and expenses of the hearing and no order is made under section 28(14)(b) of the Ordinance.

(signed)

Mr IP Tak-kong
(Chairman)

(signed)

Mr CHAN Hok-fung
(Member)

(signed)

Dr POON Wing-cheung, Lawrence
(Member)

(signed)

Ms POON Wing-yin, Peggy
(Member)

(signed)

Professor TANG Bo-sin
(Member)