Japura Development Pte Ltd v Singapore Telecommunications Ltd
[2000] SGHC 84

Case Number : Suit 1454/1999

Decision Date : 10 May 2000

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : Stuart Lindsay Isaacs QC, Margaret George and Ong Chih Ching (Koh Ong & Pnrs) for the plaintiffs; Michael Jacob Beloff QC, Michael Hwang SC and Tan Chuan Thye (Allen & Gledhill) for the defendants

Parties : Japura Development Pte Ltd — Singapore Telecommunications Ltd

Statutory Interpretation – Construction of statute – Reference to legislative history – Construction of purpose and effect of s 107(1) of Telecommunication Authority of Singapore Act 1992 – s 107(1) Telecommunication Authority of Singapore Act 1992 (Act 12 of 1992)

: This is an application by the defendants in this suit, Singapore Telecommunications Ltd, under O 14 r 12 of the Rules of Court for determination of the following question of law:

> *Whether the defendants are entitled to rely upon s 107(1) of the Telecommunication Authority of Singapore Act (Act 12 of 1992) as authority for maintaining an installation or plant for telelcommunication purposes on Lot 7455 pt Mk 27 even if the installation or plant was laid on the land before the commencement of the Act 12 of 1992 without the approval of the Commissioner of Lands required under the predecessors of Act 12 of 1992, in particular Act 1 of 1974.*
>
> *And, if the question be answered in the affirmative, for an order that the plaintiffs` claim in this action be dismissed with costs.*

Facts

In or about 1978, the Telecommunication Authority of Singapore (`TAS`) pursuant to a request made by the Public Works Department in 1976, laid a concrete casing (`the plant`) at a depth of 0.9 metres within a piece of land along Bayshore Road (`the land`). The plant was subsequently used to house parts of three international submarine cable systems.

At the time the plant was laid, the land was State land. The plant was laid by TAS pursuant to its powers under s 45 of the then in force Telecommunication Authority of Singapore Act 1974 (`the 1974 Act`) which Act was subsequently repealed. That section stated:

> *For the purpose of installing telecommunication installations and plant the Authority or any person authorised by the Authority in writing in that behalf may, at all reasonable times, enter upon any State land and may,* ***subject to the approval of the Commissioner of Lands****, erect in or upon such State land such posts and other apparatus or excavate trenches as may be necessary or proper for the purposes of such installation, and may carry out all necessary works in connection therewith, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary for such purposes:*

Provided that -

(a) when any such work interferes with improvements, buildings, growing trees or crops, the Authority shall pay compensation in accordance with the provisions of section 52 for disturbance or damages; and

(b) where the land is occupied under a licence for temporary occupation, such compensation shall be paid to the occupant under such licence. [Emphasis added.]

On 1 April 1992, the property, rights and liabilities to which TAS was entitled or subject immediately before that date became vested in the defendants by operation of s 31 of the Telecommunication Authority of Singapore Act 1992 (Cap 323) (`the 1992 Act`). The dominant purpose of that Act was to re-constitute TAS and provide for the transfer of its property, rights and liabilities to successor companies. The 1992 Act contained within it the following s 107(1), which forms the core of the argument in this application:

Every installation or plant used for telecommunications or for posts placed before 1st April 1992 under, over, along, across, in or upon any property and established or maintained by the Authority ***shall be deemed to have been placed in the exercise of the powers conferred by and after observance of all the requirements*** *of this Act. [Emphasis added.]*

In early 1997, the land was offered for tender by the Urban Redevelopment Authority on behalf of the Government of Singapore for the purpose of development of a residential condominium project. The tender was awarded to the plaintiffs and they took possession of the land on 5 May 1997.

On 7 October 1999, the plaintiffs commenced this suit No 1454/99 against the defendants alleging trespass by virtue of the presence of the plant on their land. They seek damages and a court order requiring the defendants to remove the plant from their land.

The application

It is a matter of dispute between the parties as to whether approval was given by the Commissioner of Lands, as required by s 45 of the 1974 Act, to lay the plant within the land, but for the purpose of this application the parties ask me to make the assumption that no such approval was given. If that assumption is made, the presence of the plant on the land would be a trespass which would, in the normal course of things, sound in damages for losses caused and would further entitle the plaintiffs to an order that the plant be removed. This brings us to the purpose of this application. What effect, if any, does s 107(1) of the 1992 Act have on the plaintiffs` right to bring the action in trespass?

Counsel for the defendants, Mr Beloff, submits that the effect of s 107(1) of the 1992 Act is clear. Although the plant was placed on the property before the 1992 Act came into force, it is by virtue of that section to be treated as if it had been placed on the land thereafter. In addition, and more relevant to the present purposes, even though the plant was not lawfully placed on the land, it is to be treated as if it was lawfully placed on the land.

In Mr Beloff`s view, the `perceptible purpose` of s 107 is to `wipe the slate clean` for the defendants and to impose the requirement to seek permission only for future installations on State land. So to interpret the provision, he submitted, accords with Parliamentary intention in that:

- It would be beneficial to allow all public telecommunications licensees to set off on an even footing and not be saddled with past burdens of the TAS.

- Deeming all plants to be rightly laid prevents vital telecommunications services from being disrupted.

Since the plaintiffs can only complain of the trespass when they acquired the land in May 1997, some five years after the deeming provisions within s 107 took effect, they are unable now to sustain any cause of action in respect of the unlawful presence of the plant.

Counsel for the plaintiffs, Mr Isaacs, disagrees with Mr Beloff`s construction of s 107(1) of the 1992 Act. In his view, the purpose and effect of s 107(1) is simply to bring previously established installations or plants within the scope of the 1992 Act, so that the relevant provisions of the 1992 Act would be applicable to installations or plants whenever they were established. Mr Isaacs submits that the section does not provide an `amnesty` by making lawful that which was previously unlawful. On its true construction, the section should be read as if the word `lawfully` appeared before the words `posts` and `placed` as follows:

> *Every installation or plant used for telecommunications or for posts **(lawfully)** placed before 1st April 1992 under, over, along, across, in or upon any property and established or maintained by the Authority shall be deemed to have been placed in the exercise of the powers conferred by and after observance of all the requirements of this Act.*

Mr Isaacs illustrates the purpose of s 107(1) which he is contending as follows: Under s 100(1) of the 1992 Act, where a public telecommunication licensee`s installation or plant has been laid on any land under the provisions of s 97 or 98 of the 1992 Act, and any person who owns or occupies the land or any person to whom the land is subsequently alienated or occupied desires to use the land in such a manner as to render it necessary or convenient that such installation or plant should be removed to another part of the land, that person may require the licensee to remove or alter such installation or plant accordingly. Under s 100(2), if the licensee fails to comply with the requisition, the person may apply in writing to TAS and TAS shall, as soon as practicable, specify a date to inquire into the facts of the fact. Without s 107(1), installations or plants placed prior to the 1992 Act coming into force (ie pursuant to predecessor Acts) would be excluded from the scope of sections such as s 100(1) and (2). The same argument can be made in respect of other sections of the 1992 Act, such as ss 99(2), 100(4) and (4), and 103.

Mr Isaacs submits that if the effect of s 107(1) was to make lawful that which was previously unlawful, which Mr Beloff contends, the 1992 Act would have expressly provided for this. In his view, the primary purpose of the word `deemed` is to bring in something which would otherwise be excluded (relying on dicta in **Barclays Bank Ltd v IRC** [1961] AC 509). The proper approach of the court is to ascertain the scope of the deeming provision with reference to the scope of the statute. In **Ex p Walton** [1881] 17 Ch D 756, Lames LJ said:

> *When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.*

However, this is subject to the established principle of interpretation that a deeming provision in a statute which leads to absurdity and injustice should be rejected (following the reasoning of Lord Browne-Wilkinson in **Marshall (Inspector of Taxes) v Kerr** [1995] 1 AC 148).

In addition, Mr Isaacs relied on two further established canons of statutory interpretation. First, the principle of construction in good faith (in bonam partem) which states that if a statutory benefit is given on a specified condition being satisfied, it is presumed that Parliament intended the benefit to operate only where the required act is performed in a lawful manner. Second, the principle that a person should not benefit from his own wrong. In the context, the effect of this principle is that where a grant is in general terms, there is an implied provision that it shall not include anything which is unlawful or immoral.

Determination.

Section 107(1) of the 1992 Act is of ancient pedigree in Singapore. It can be traced back to an Ordinance of the Legislative Council of the Straits Settlements, No VII of 1895 (`the 1895 Ordinance`) which related to telegraphs. Section 18 of that Ordinance stated:

> *Every telegraph line or post placed before the passing of this Ordinance under over along across in or upon any property for the purposes of a telegraph established or maintained by the Government shall be deemed to have been placed in exercise of the powers conferred by and after observance of all the requirements of this Ordinance.*

Successive Acts have preserved this provision in similar form, leading right up to s 107(1) of the 1992 Act which was enacted almost 100 years later. (The Telecommunications Act 1999 (Act No 43 of 1999) which replaced the 1992 Act, however, does not contain a similar provision but it was not submitted before me that this absence has any impact on the issue before me.)

Given the long legislative history of s 107(1) of the 1992 Act, it would, I think, be instructive to transpose oneself back in time to the passing of the 1895 Ordinance and ask what purpose s 18 of that Ordinance would have served. The 1895 Ordinance does not specify the purposes for which it was enacted but it is not unreasonable to suppose, from a general reading of the provisions contained therein, that it was meant to establish by law the Legislative Council`s monopoly control over all telegraphic equipment within the Straits Settlements, and also to create a framework for the future establishment and maintenance of all telegraphic equipment within the Colony. Part II of the 1895 Ordinance, which is entitled `Privileges and Powers of the Government`, begins with the following section:

> *3 Within the Colony the Governor-in-Council shall have the exclusive privilege of establishing maintaining and working telegraphs.*
>
> *Provided that the Governor-in-Council may grant a license on such conditions and in consideration of such payments as he thinks fit to any person to establish maintain or work a telegraph within any part of the Colony.*

Provided also that all permissions granted by the Government previous to the commencement of this Ordinance and then in force shall so far as they could be granted under this Ordinance be deemed to have been granted hereunder.

Part III of the 1895 Ordinance which is entitled `Power to Place Telegraph Lines and Posts` contains ss 9 to 18, and is divided into three distinct divisions. The first division, containing ss 9 and 10, gives the telegraph authority power to place and lay lines and posts and also to maintain those lines or posts. Section 9 states:

The telegraph authority may from time to time place and maintain a telegraph line under over along or across and posts in or upon any immovable property.

Provided that -

(a) The telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Government or to be so established or maintained;

(b) The Government shall not acquire any right other than that of user only in the property under over along across in or upon which the telegraph authority places any telegraph line or post; and

(c) Except as hereinafter provided the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority without the permission of that authority; and

(d) In the exercise of the powers conferred by this section the telegraph authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than that referred to in clause (c) shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

The second division consists of ss 11 to 14 and is headed `Provisions applicable to Property vested in or under the Control or Management of Local Authorities`. These sections provide that the telegraph authority has certain responsibilities and powers in relation to works done on land managed by local authorities. For example, s 12 states:

When under the foregoing provisions of this Ordinance a telegraph line or post has been placed by the telegraph authority under over along across in or upon any property vested in or under the control or management of a local authority and the local authority having regard to circumstances which have arisen since the telegraph line or post was so placed considers it expedient that it should be removed or that its position should be altered the local authority may require the telegraph authority to remove it or alter its position as the case may be.

The final division containing ss 15 to 18 is headed `Provisions applicable to all property`. I have

already set out s 18 above - that is the crucial section.

Seen in the context of the 1895 Ordinance, I think the purpose and effect of s 18 is clear. The words:

> *Every telegraph line or post placed before the passing of this Ordinance ... shall be deemed to have been placed in exercise of the powers conferred by ... this Ordinance.*

clearly do have the meaning contended by Mr Isaacs in this case, which is to bring previously established lines or posts within the scope of the 1895 Ordinance so that the relevant provisions of the Ordinance would be applicable to plants or installations whenever they were established. To that extent, I agree with the primary submission of Mr Isaacs.

However, the section does not stop there. It goes on (by use of the disjunctive `and`) to state that:

> *Every telegraph line or post placed before the passing of this Ordinance ... shall be deemed to have been placed ...* ***after observance of all the requirements of this Ordinance****. [Emphasis added.]*

Some meaning must be ascribed to the final nine words of the section but Mr Isaacs does not appear to have offered any. In my view, the plain effect of those words is that in relation to lines or posts placed prior to the passing of the Ordinance, any failure to conform to any formal requirements which the Ordinance prescribes is thereby cured. So, for example, under s 9(c) of the Ordinance, the telegraph authority is required to obtain permission from the local authority before placing a line or post on land managed or controlled by that authority. In relation to lines or posts placed on the land prior to the passing of the Ordinance, that permission is deemed to have been obtained whether or not it in fact had been obtained. From a policy point of view, this would have made perfect sense at the time. The colonial government would not have wanted to be held responsible for any non-compliance with the technical requirements of the Act in relation to pre-existing lines or posts.

I would add, however, that s 18 of the 1895 Ordinance would not necessarily affect the telegraph authority`s authority to pay compensation in certain circumstances, such as under s 9(d) of the Ordinance (see [para ] 16 above) where damage was done to property; nor would it affect the authority`s obligation to remove or alter existing lines or posts under s 12 (see [para] 17 above).

Given the advances of telecommunications equipment and infrastructure over the past 100 years, it is perhaps somewhat surprising that the general scheme of the 1895 Ordinance is still discernible in the 1992 Act. Section 97 of the latter provides that:

> *For the purpose of providing any telecommunication service, a public telecommunication licensee or any person authorised by that licensee in that behalf may, at any reasonable time, enter upon any State land and may, subject to the approval of the Collector of Land Revenue, erect in or upon the State land such installation or plant used for telecommunications ...*

Given the lineage between the two enactments and the fact that the general scheme of the 1895 Ordinance has remained intact throughout, I think s 107(1) in the 1992 Act must have the same

general consequences which I have explained in relation to s 18 of the 1895 Ordinance, ie it not only brings all pre-existing installations and plants within the scope of the 1992 Act so that - to quote Mr Isaacs - the relevant provisions of the 1992 Act would be applicable to installations or plants whenever they were established, but also cures all failures to comply with the procedural requirements contained in the 1992 Act in relation to those installations or plants.

Having come to this conclusion, I think the question for determination before me on this application must be answered in the defendants` favour, for the critical facts upon which this case turns (and which I have been asked to assume) relates to a failure to observe a requirement for TAS to obtain approval of the Commissioner of Lands when placing a plant on State land. That requirement is materially repeated in the 1992 Act under s 97 (although approval is in that section required from the Collector of Land Revenue) and since compliance with the requirements of s 97 is deemed, that is the end of the matter.

I hasten to add, however, that I do not think that my interpretation of s 107(1) has the effect of `wiping the slate clean` as Mr Beloff suggests. The section deems that all the requirements of the 1992 Act have been observed in respect of every installation or plant placed before 1 April 1992. As I have alluded to above, it has no effect, for example, on requirements of the general law; nor would it have any effect on provisions in previous Acts which provide for compensation to be paid after the placing of the plants, such as s 45(a) of the 1974 Act (see [para] 3 above). To this extent, my reading of the section is the minimum required to give it a sensible meaning. I believe the interpretation I adopt is entirely consistent with the canons of interpretation relied upon by Mr Isaacs and, in addition, it is consistent with s 31 of the 1992 Act under which not only the rights but also the liabilities of TAS are passed to the licensee.

The defendants have prayed that if the question posed in this application is answered in the affirmative, the plaintiffs` claim be dismissed with costs. That is a consequence that would follow from an affirmative answer. I therefore grant that prayer and dismiss the plaintiffs` claim with costs. The plaintiffs are also to pay the costs of this application. Costs are to be taxed on the basis of two solicitors under O 59 r 19(1).

Outcome:

Order accordingly.