



Summary of Judgment

Tang Chiu Man & Lam Ka Fun Anita (Applicants) v Secretary for Justice for Director of Lands (Putative Respondent) HCAL 916/2021; [2021] HKCFI 3016

Decision : Applicants' application for hearing two judicial review leave applications together
Date of written submissions : 9 & 10 September 2021
Date of Decision : 11 October 2021

Background

1. On 20 January 2021, the Applicants took out an application for leave for judicial review in HCAL 68/2021 challenging that Lands Department ("**LandsD**") failed or refused to determine their rebuilding application of New Territories Exempted Houses on their lands in Yuen Long ("**JR1**").
2. On 21 May 2021, LandsD granted the rebuilding application with conditions imposed ("**May Decision**").
3. On 25 June 2021, the Applicants took out another application for leave for judicial review of the May Decision ("**JR2**").
4. On 22 July 2021, the Applicants by Summons applied to the Court for a direction that the leave application in JR2 be heard together with the leave application in JR1 already scheduled for 23 November 2021, before the same judge.
5. With the parties' agreement, the Court directed that the Summons be determined on paper, i.e. by written submissions of both parties without a hearing.

Issues in dispute

6. The Summons raised a matter of case management. Both sides invited the Court to exercise a degree of robust management. The Applicants sought hearing of the two JRs together (given the common background and issues involved), whereas the Putative Respondent submitted that both JR1 and JR2 be dismissed right away in the spirit of the new PD 26.1 (for the subject matters of both actions are not amenable to judicial review and the May Decision under challenge in JR2 rendered JR1 academic).

Department of Justice's Summary of the Court's Decision

(Full text of the judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=139310&QS=%2B&TP=JU)



7. The parties' agreement for resolving matters on paper only extended to the Applicants' application in the Summons for hearing the two JRs together on 23 November 2021, and not to the leave applications for JR. In light of the main amenability issue common to both JRs and the significant overlap in the materials, it was probably preferable to hear them together in the upcoming scheduled hearing, so that the ruling in JR1 on that issue, which would be carried over to JR2, would be clearly binding in both actions. (paragraphs 12 to 14)
8. In the particular circumstances of this case, there would be an appropriately expeditious and efficient disposal of the JR actions by hearing them together before the same Judge. (paragraph 17)
9. However, there was considerable force in LandsD's arguments that (i) the subject matters under challenge in JR1 and JR2 were not amenable to judicial review and (ii) the subject under challenge in JR2 (as it was) already rendered JR1 academic. (paragraph 11)
10. Thus, in terms of sending a clear message that unmeritorious judicial review applications and their costs consequences would be dealt with appropriately, the Applicants were put on clear notice that they might face consequences of adverse costs order on an indemnity basis should they continue with JR1 and fail in the end. (paragraphs 9 and 16)

Civil Division
Department of Justice
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