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This Land Was Made for You and Me: Public Participation in Land Use Decisions in Singapore

Jack Tsen-Ta LEE

Singapore Management University, jack.tt.lee@gmail.com

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Outline

- Edward Soja and the concept of spatial justice.
- Laws relating to the built environment: planning law, compulsory acquisition law, preservation of monuments law.
- Laws relating to transient use of public space: Public Entertainments and Meetings Act and Public Order Act.

What is Spatial Justice?



Spatial Justice

- A concept discussed in Edward Soja's *Seeking Spatial Justice* (2010).
- Builds on work of philosophers and social theorists like Henri Lefebvre (1901–1991) and David Harvey (born 1935).

Spatial Justice

- The city is “a special space and place of social and economic advantage, a focal point for the workings of social power and hierarchy, and therefore a potent battleground for struggles seeking greater democracy, equality, and justice”.

Spatial Justice

- This has particular resonance for Singapore, which has been 100% urbanized since 1950s.
- Spatial justice closely linked to Lefebvre’s ‘right to the city’.
- Urban life produces unequal power relations, which eventually lead to unjust distributions of social resources in the city.

Spatial Justice

- Right to the city corrects this imbalance by providing disadvantaged city dwellers with the basis upon which to call for “greater access to social power and valued resources”.
- The aim is to “gain greater control over the forces shaping urban space”.

Spatial Justice

- Right to the city includes:
 - right of users to make known their ideas on the space and time of their activities in the urban area; and
 - right to use of the centre, which is a privileged place, instead of being dispersed and stuck into ghettos.

Spatial Justice

- French and Anglo-American legal traditions – justice and liberal democracy ‘legalized’ by being associated with human rights which are protected by law.
- US Bus Riders Union case – 1964 Civil Rights Act class action against LA Metropolitan Transport Authority.

Spatial Justice

- Does US experience have any relevance for Singapore?
- Constitution, of course, doesn't mention spatial justice. Can it be protected by right to equality (Art 12(1)) or other fundamental liberties like rights to life and personal liberty (Art 9(1))?

Laws Relating to the Built Environment



Built Environment

- Singapore has land area of 714.3 km², so planned development of its built environment is essential.
- Planning Act requires URA to update the Master Plan every five years.

Built Environment

- Current Master Plan: 2008.
- Master Plan consists of:
 - information on how land may be used,
 - approved maps, and
 - written statement that aids the interpretation of the Master Plan by summarizing main proposals and providing descriptive matter to illustrate the proposals.

Built Environment

- Written statement deals with zoning, plot ratios and factors to be taken into account when approving development applications.
- “[A]ny area... of special architectural, historic, traditional or aesthetic interest” can be designated in the Master Plan as a conservation area.

Built Environment

- Master Plan guides medium-term development over ten to 15 years, and is adhered to strictly in controlling development.
- Concept Plan guides long-term development over 40–50 years and assists updating of Master Plans – not statutorily required. Now: Concept Plan 2011.

Built Environment

- High level of public participation in updating of Concept Plan and Master Plan.
- Concept Plan – lifestyle survey and focus groups.
- Master Plan –
 - Proposals to amend by URA must be published in *Gazette* and English, Chinese, Malay and Tamil newspapers.

Built Environment

- Master Plan –
 - Public must be given at least two weeks to make objections or representations to the URA.
 - If objections or representations received, Minister must convene hearing or public inquiry.
 - Minister must consider objections and representations, and findings of hearing or public inquiry when making decision.

Built Environment

- However, no inquiry required when:
 - URA draws up certified interpretation plans to provide detailed interpretation of Master Plan.
 - Applications are made to URA for *planning permission* to develop land, or *conservation permission* to carry out works within conservation area.

Built Environment

- Remedy must be sought through judicial review in administrative or constitutional law. Difficulties:
 - Will applicant have sufficient standing to bring a claim? (More on this later.
 - Can he or she prove that there has been a breach of administrative law rules or the Constitution?

Built Environment

- Court's role in judicial review of administrative action – to ensure legality, not to deal with merits.
- Probably not easy to show that Minister has breached any administrative law rules.
- No cases yet involving challenge to approval of someone else's development work.

Built Environment

- *Borissik v URA* (2009) – home owner challenged URA’s refusal to grant permission for renovation work. Held:
 - No evidence that URA took extraneous objectives into account.
 - URA didn’t act irrationally.
 - URA didn’t make any representation giving rise to legitimate expectation.

Built Environment

- Can fact situation like the Bus Riders Union case be challenged in Singapore?
- No anti-discrimination legislation equivalent to Title VI of the Civil Rights Act of 1964.
- Claim would have to be brought alleging infringement of rights to equality and equal protection (Art 12(1)).

Built Environment

- However, rational nexus test favourable to Government because of mere rationality standard and strong presumption of constitutionality.

Built Environment

- *Eng Foong Ho v AG* (2009) – temple devotees claim discrimination as temple land acquired but not Hindu mission and Christian church’s land.
- Held: appellants conceded that Collector acted in good faith, and didn’t adduce any evidence of arbitrary action on his part.

Built Environment

- Collector's decision "based solely on planning considerations"; no "intentional and arbitrary discrimination".
- Stringent standard favourable to Government, and hence not easy for an applicant to establish.

Built Environment

- Can spatial justice be protected by rights to life and personal liberty (Art 9(1))?
 - "Personal liberty" interpreted to refer "only to the personal liberty of the person against unlawful incarceration or detention". (Authority?)
 - "Life" not interpreted yet – should Malaysian case *Tan Tek Seng* (1996) be followed?

Built Environment

- *Tan Tek Seng* (1996) – "life" includes elements that form the quality of life including, for instance, the right to live in a reasonably healthy and pollution-free environment.
- At present, people likely to be put off by cost and difficulty of applying for judicial review.

Built Environment

- Why no procedure in Planning Act for challenging applications for development permission?
 - Volume of applications too high?
 - Fear of delaying development?
 - Concern about frivolous applications? Growing NIMBY phenomenon?
- Follow Master Plan amendment procedure?

Built Environment

- Preservation of Monuments Act – Minister may, following consultation with PMB, issue preservation order in respect of monument. It is then known as a “national monument”.
- Before this, PMB must notify owner or occupier of monument and adjacent land that will be affected by order.

Built Environment

- Owner/occupier entitled to make representations against proposed order.
- Procedure doesn't apply:
 - To people who aren't owners/occupiers.
 - Minister has not indicated that he or she intends to gazette a monument.

Built Environment

- Once again, person will have to start judicial review proceedings against Minister.
- Difficulty of proving that Minister acted in breach of administrative law rules.
- Does person have sufficient standing to bring the case?

Built Environment

- Narrow approach – *Ex parte Rose Theatre Trust* (1990, UK).
- Remains of The Rose theatre found.
- Group of “persons of undoubted expertise and distinction” in archaeology, theatre, literature, *etc*, as well as residents and their local MP came together to form the Rose Theatre Trust Co.

Built Environment

- Company asked Environment Secretary to declare the theatre as an ancient monument to protect it, but he declined.
- Direct financial or legal interest not needed.
- But statute must expressly or impliedly give the applicant a greater right or expectation than any other citizen to have a decision taken lawfully.

Built Environment

- This means certain administrative decisions will go unchallenged even if clearly unlawful.
- But law doesn't require courts to be there for every individual interested in litigating the legality of an administrative decision.

Built Environment

- *Ex parte Rose Theatre Trust* no longer good law in the UK, and is treated as an exceptional case by some commentators.
- UK courts currently apply a more liberal test.
- Singapore's test is apparently also fairly broad.

Built Environment

- *Chan Hiang Leng Colin v Minister for Information and the Arts* (1995) – High Court said that court has discretion to recognize that a “mere stranger... has standing to invite the court to prevent some abuse of power”. Such a person is not a “meddlesome busybody but... a public benefactor”.

Built Environment

- Court of Appeal (1996) cited *ex parte Blackburn* (1976) – Court of Appeal of England and Wales said that a couple had standing to sue the Greater London Council for lax censorship as citizens, ratepayers and parents living within the area that GLC had responsibility over.

Built Environment

- Thus, there may be a good chance that Singapore courts will take a broader rather than narrower approach to standing.
- But still difficult to establish that the Minister has breached administrative law rules.
- Perhaps Preservation of Monuments Act should allow for representations to be made by a wider group of people.

Transient Use of Public Space



Use of Public Space

- Public Entertainments and Meetings Act (PEMA):
 - Demonstrations, displays and parades are “public entertainments” (even if they aren’t for amusement) and require a licence from the police.
 - Since 2009, lectures, talks, addresses, debates and discussions do not.

Use of Public Space

- But such activities are dealt with under the Public Order Act (POA):
 - Police permit required for public assemblies and processions.
 - Such activities prohibited in vicinity of the Istana, Parliament House, the Supreme Court, the Old Supreme Court Building, City Hall, the Padang and the Subordinate Courts.

Use of Public Space

- Permits not required if activities held indoors or at Speakers' Corner and:
 - organizers and speakers all Singapore citizens;
 - don't deal with race, religion or matters which may cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups in Singapore; and
 - organizers are present throughout.

Use of Public Space

- Effect of laws is to remove assemblies and processions from highly visible open-air locations to indoor venues and Speakers' Corner.
- Thio Li-ann has said that Speakers' Corner preserves "a literal 'space' for practicing free speech, while limiting or 'cornering' it in that space" and that it is an "exercise in tokenism".
- Detracts from right to the city, which includes right to use of the centre?

Use of Public Space

- Government's perspective:
 - If protests held during major events like 2006 IMF meeting, law enforcement distracted from task of ensuring event security.
 - Risk that peaceful events will turn violent. If race or religion involved, this will scar communal relations and erode sense of order and security now enjoyed.

Use of Public Space

- Does such a constant distrust of Singaporeans deprive them of opportunity to mature as a society and show that they can express views without causing mayhem?

Use of Public Space

- POA not yet challenged constitutionally, but PEMA has been found not to breach right to free speech (Art 14(1)(a)), so a similar challenge against POA unlikely to succeed.
- Parliament appears to have extensive power to limit rights to free speech and assembly.

Use of Public Space

- Art 14(2)(b): "Parliament may by law impose – ... on the right [to free assembly], such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order..."
- Given a broad interpretation by the High Court in *Chee Siok Chin* (2006).

Conclusion



Conclusion

- Spatial justice more a philosophical than a legal concept.
- Useful as a yardstick against which to measure degree of public participation in land use decisions in Singapore.

Conclusion

- Public participation appears to be built into the system at the macro level (amendments to Master Plan, consultation when drawing up Concept Plans).
- No statutory procedure at the micro level (permission to develop land, designation of national monuments).

Conclusion

- Aggrieved persons must thus commence judicial review in the High Court. They may face the following difficulties:
 - Standing.
 - Establishing that administrative law rules breached.
 - Narrow interpretations of the Constitution.

Conclusion

- Soja doesn't assert that spatial justice can only be vindicated through law.
- Perhaps its true value is in acting as a rallying point to encourage grassroots and community groups to effect change through the political process.

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