LC Paper No. CB(1)1280/00-01(01)

CACV 281, 282, 283, 287, 288, 289, 290, 291, 292, 293, 294, 295, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 340, 341, 342, 343, 344 and 345/1998
CACV 27 and 28/1999
(Consolidated)

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF APPEAL

CIVIL APPEAL NOS. 281, 282, 283, 287, 288, 289, 290, 291, 292, 293, 294, 295, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 340, 341, 342, 343, 344 and 345 OF 1998
CIVIL APPEAL NOS. 27 and 28 OF 1999
(Consolidated)

(ON APPEAL FROM HCMP 114 OF 1998)

IN THE MATTER of the property known as Tiu Keng Leng Cottage at Site No. 25, Section No. 7 and Tiu Keng Leng Cottage at Site No. 131, Section No. 11, Tiu Keng Leng Cottage Area, Hong Kong

and

IN THE MATTER of compensation payable to residents of Tiu Keng Leng under the decision of Sears, J. in High Court Miscellaneous Proceedings No. 114 of 1998

BETWEEN

TONG TIM NUI and others	Applicants (Appellants)
and	
HONG KONG HOUSING AUTHORITY	Respondent (Respondent)

Court : Godfrey, Mayo & Rogers, JJ.A.

Hearing : 8 & 9 September 1999

Judgment : 27 September 1999

JUDGMENT

Godfrey, J.A.:

Introduction

By an order made in the Court of First Instance on 27 June 1996, Sears, J. declared that those of the applicants in the judicial review proceedings against the Hong Kong Housing Authority which were before him and who were residents at Tiu Keng Leng on 5 June 1961 had a "right to damages for breach of a promise by the Hong Kong Government that they would not be moved away" from that area; and directed that the issues relating to the eligibility of the applicants to claim "damages" and the quantum of "damages" be reserved to himself for determination.

The appeals before this court are appeals by those of the applicants who complain about the decisions of the judge, in their individual cases, on those issues of "eligibility" and "quantum of damages". The Hong Kong Housing Authority opposes these appeals but has submitted to the judge's order of 27 June 1996 (against which it has not appealed) and all his subsequent decisions as to "eligibility" and "quantum". In these circumstances, nothing said in this judgment is intended to operate (nor indeed could it operate) so as to disturb any of the decisions of the judge to the cases of those applicants who have *not* appealed against the judge's decisions on "eligibility" and "quantum of damages".

As to those applicants who *have* appealed, some of them have complained that the judge has ruled them "ineligible" to claim "damages"; some of them have complained that the "damages" awarded to them by the judge were too low; and some of them have complained that the judge failed to give them a fair hearing when he came to decide whether or not they *were* "eligible". I need not distinguish for the purposes of this judgment between one class of applicants and another. For the reasons which will appear, I am of the opinion that none of them have ever had any valid claim to "damages" (or any other form of monetary compensation) at all and that this court should therefore dismiss their appeals. (Of course, those of the applicants who have been declared "eligible" and have had awards made in their favour, even if awards lower than they would have liked, will not be adversely affected by such a conclusion. Since the Hong Kong Housing Authority has not appealed to this court, either against the judge's order of 27 June 1996 or against any of his decisions in any individual case, no applicant will be deprived of the benefit of any such decision in his favour.)

With that introduction, I turn to the facts.

The facts

In 1949, the most recent of the civil wars which have plagued the mainland of China throughout its history ended with a victory for the communist forces over the nationalist forces. Most of the senior officers of the nationalist forces took refuge in Taiwan. Of the other ranks, deserted by their officers, many fled to Hong Kong, where the colonial administration permitted them to remain, at first in the Mount Davis area, but eventually (in 1950) at Tiu Keng Leng (Rennie's Mill). The colonial administration did little more for them. Left to their own devices, they created and developed their own settlement at Rennie's Mill, which became a nationalist enclave.

In 1958, the colonial administration enacted the Resettlement Ordinance, Chapter 16 of 1958, which conferred on the Governor powers to create "cottage re-settlement areas" and to issue occupation permits to the persons permitted to reside in those areas, such permits to be determinable on notice.

The colonial administration decided to create a cottage re-settlement area at Rennie's Mill and on 2 June 1961 issued a press release announcing that decision. This reads as follows:-

"Rennie's Mill Camp to be Administered as a Resettlement Area

Improved Amenities to be Planned

Rennie's Mill Camp, at Junk Bay, is to be taken over by the Resettlement Department and administered as a resettlement area. In a few days officers of the department will begin a survey of the area in order to make a census of the buildings and their occupants. This survey will also be used as a basis to plan improvements of the amenities within the area, such as the provision of roads, paths, markets, latrines, water supply and sanitary services.

Announcing this today the Commissioner for Resettlement said that some structures may later have to be moved to allow for those planned improvements, but this would be avoided as far as possible. A new site within the area will be allotted to any family whose structure is cleared for this purpose, and every assistance will be given by the department to facilitate the move.

To meet part of the cost of improved facilities, occupants of all buildings within the area will in due course have to pay a permit fee for the site that they occupy Fees payable will vary according to the size of the site. The fee for a cottage of average size, for example, will be $10 a quarter.

Schools and clinics operating in the area will be required to register with the Government departments concerned and every encouragement will be given to such organisations and to approved welfare associations to continue to operate Permit fees for sites used for approved welfare or educational purposes will be assessed on a specially reduced scale.

It is not proposed to move from the area of Rennie's Mill Camp any of the present inhabitants but no new families will be allowed to take up residence in the area unless they qualify for resettlement, and the permission of the Commissioner for Resettlement will be required for the construction of any new buildings or the transfer of ownership of existing buildings.

Land is being cleared nearby for the establishment of ship-breaking yards and it is hoped that other industries will also develop in the area thus providing a convenient centre of employment for the inhabitants of Rennie's Mill Camp.

It is expected that the preliminary survey which will provide the census of buildings and occupants will be completed in about three months."

This announcement caused some considerable anxiety to the Rennie's Mill residents, as appears from a further announcement, made by the Commissioner for Resettlement on 5 June 1961, which reads as follows:-

> "Recently there are rumours in Rennie's Mill that Government has planned to build multi-storeyed resettlement blocks in the area. which has caused some residents to become disturbed and to worry that once it is put into effect they will be forced to move away from their existing comfortable accommodations. Having learnt of this, the Commissioner for Resettlement hereby solemnly declares that the government will manage Rennie's Mill in the same manner as the other cottage resettlement areas (for example, Mount Davies Cottage Resettlement Area), and does not intend to build any multi-storeyed block within the area. Most of the residents in the area will be allowed to continue to reside in their existing buildings *indefinitely.* (emphasis added) They will be required to pay a small amount of permit fee only. As regards those buildings which have to be removed to allow improvement of roads and traffic and for the good of the community, such removal will be carried out only as a last resort. The Commissioner for Resettlement further declares that the government for the time being has no plan to resettle any people from urban area to Rennie's Mill area causing the population in the area to increase.
>
> In any event, our department has no plan for removal or resettlement of any buildings in the next 6 months."

This did not allay the concerns of the residents. They petitioned the Governor to maintain the status quo.

The Commissioner responded to this petition by a letter dated 15 June 1961 which reads as follows:-

> " I am directed to refer to your petition of the 8th June, 1961 addressed to His Excellency the Governor, and signed by yourself and other residents at Rennie's Mill (Tiu Keng Leng). I am to say that His Excellenoy has given most careful and sympathetic consideration to your representations, but has directed me to tell you that he cannot agree to alter the decision, which has already been conveyed to you, that the area of Rennie's Mill (Tiu Keng Leng) is, in due course, to become a resettlement area under the general administration of the Resettlement Department. His Excellency, however, wishes me to assure you that he sees no reason whatsoever for the inhabitants to be perturbed or worried at this decision. He is confident that the future well-being of the inhabitants, so far from being adversely affected by this decision, will, on the contrary, be materially improved and strengthened.

2. As to the receipt of assistance by those who are in need, His Excellency wishes me to assure you that the inhabitants of Rennie's Mill (Tiu Keng Leng), as residents of Hong Kong, are eligible to receive the same help as those who live elsewhere in Hong Kong, Kowloon and the New Territories. There is no reason to suppose that welfare and other voluntary agencies will not continue to extend assistance, as before, to those in genuine need.

3. Some residents have expressed anxiety about the removal of existing buildings. I am to assure you that, as the Government has already made clear in public statements, this removal is to be limited to the very minimum. In the few cases where such removal proves to be necessary, arrangements will be made to reprovision buildings without hardship to the individuals affected. I am directed, however, to assure you that no domestic buildings will have to be resited for some considerable time.

4. I am also directed to refer to the anxiety which some inhabitants have expressed about the future of their schools. These fears are unnecessary. The Hong Kong Government has in fact already set aside funds with the object of making improvements to these schools. This will bring considerable benefits to the area, and His Excellency hopes that the school authorities will co-operate with the Education Department, so that educational facilities may be improved.

5. Preparations for converting Rennie's Mill (Tiu Keng Leng) into a resettlement area will proceed gradually. Surveyors will, in a few days time, start a ground survey with the object of preparing an accurate and detailed plan of the area as it is at present. The purpose of this plan is to enable the Resettlement Department to determine what improvements are necessary for the benefit of the community as a whole. In planning improvements, the need for better drainage, improved paths, adequate and hygienic latrine facilities and a good water supply will be examined in detail. His Excellency is confident that the residents will extend their co-operation and assistance in furthering the task of the Resettlement Department in every way possible.

6. I am to say that work has already started on building a temporary Resettlement Office where officers of the Resettlement Department may then be contacted during normal working hours in order to deal with the day-to-day problems of residents as they arise. Later on permanent Resettlement Department staff quarters and offices will be constructed.

7. As to Permit Fees, which will be levied at a later date, residents will only be required to pay at the rates applying to outlying cottage areas. These are very low and in the case of a small residential hut will be $5 or $10 a quarter. His Excellency does not consider that the payment of these small fees, which is a recognised requirement throughout the Colony for the occupation of Crown Land, could be held to constitute any hardship.

8. I am to say that His Excellency has noted your request regarding the name of this area. I am to inform you that, as you know, the official name of this locality has for a long time, been 'Tiu Keng Leng', and it is the intention in furture to retain this name and call the area Tiu Keng Leng Village (in English, Rennie's Mill Village).

9. Finally, I am directed by His Excellency to assure you that there is no need for the inhabitants to be concerned as to their future. Planning and carrying out of improved amenities for their well-being will proceed gradually and with the minimum of disturbance or inconvenience.

10. In conclusion, I am to say, that if any residents wish to have clarification on any matter they should contact the local representative of the Resettlement Department at Tiu Keng Leng."

After this letter of 15 June 1961, the residents appear to have expressed no further concern about their position until, in 1963, the colonial administration announced its intention to introduce, for the first time, permit fees for the right to occupy premises at Rennie's Mill. This led to another petition dated 26 March 1963, the response to which, on behalf of the Governor, reads as follows:-

" I am directed by His Excellency the Governor to refer to your petition dated 26th March, 1963, on the subject of the introduction of permit fees in Rennie's Mill Village in accordance with normal practice in Cottage Resettlement Areas.

2. His Excellency is happy to note that you accept the obligation to regularise the tenure of your structures by the payment of permit fees, which it is proposed to charge with effect from the 1st January, 1964, and that your only objection is on the grounds of hardship. The proposal to declare Rennie's Mill Village a Cottage Area was made known to you on the 2nd June, 1961, and Government, in furtherance of its intentions to improve conditions for the residents there, has, in the meantime, carried out extensive developments. These developments have included the provision of a piped water supply with public standpipes at a cost of over $500,000, reserve water tanks at $28,500, incinerators at $36,500, aqua privies at $170,000, improvements to pathways and channels, etc. at $14,000. Postal delivery service and additional fire precautions have been arranged and a composite post office/fire station is planned. Government has also assumed responsibility for cleansing within the village and employs nearly 30 labourers regularly on this task. The construction of the Resettlement Department Office and Quarters has also brought economic

benefit through the employment of local labour. Pest control and hygiene measures have been extended. Closer liaison with all branches of Government has been effected by the presence within the village of Resettlement Department staff. The Resettlement Department has also made available funds for the improvement of private schools.

3. While appreciating that the residents of Rennie's Mill Village have contributed their share of labour to the development of the area over the last 13 years. His Excellency desires me to draw attention to the fact that Government has refrained from the collection of fees over this extended period and also to the extent to which some residents are employed outside and others in cottage industries within the area. It is recognised that some of the villagers underwent hardships in the early years, but this was the experience of very many immigrants who arrived at that time and who now live elsewhere in the Colony, many of them in cottages in resettlement areas for which they pay the normal permit fees under the Resettlement Ordinance.

4. As to your reference to damage sustained in Typhoon Mary and Wanda, I am to say that $14,867 was paid out from the Community Relief Trust Fund in unconditional relief after the former and $51,140 after the latter. It is presumed that the loans, to which you refer, were made by charitable bodies as Government has no record of any such transactions.

5. The statutory fees for cottage sites in outlying resettlement areas are as follows:-

Site Area in square feet	Permit Fee Payable per Quarter i.e. 3 months
Under 176	$5.00
176 - 225	$10.00
226 - 300	$15.00
301 - 400	$25.00
401 - 500	$45.00
501 - 800	$70.00
801 - 1,200	$150.00
1,201 - 2,000	$200.00
2,001 - 5,000	$300.00

(Each additional unit of 3,000 sq. ft. or part thereof - $200.00)

These fees, therefore, are what you will be required to pay for a given area. At present there are 1,590 domestic and business structures in Rennie's Mill Village and, based on the sizes of these structures the quarterly fees will be:-

$5.00 per quarter	391 structures
$10.00 " "	246 "
$15.00 " "	306 "
$25.00 " "	304 "
$45.00 " "	181 "
$70.00 " "	129 "
$150.00 " "	24 "
$200.00 " "	8 "
$300.00 " "	1 "

The fees to be charged are much lower than those charged for cottage sites in areas such as at King's Park, Lai Chi Kok, So Kon Po, etc. It is not considered that these fees will give rise to hardship, but those who wish to quality for a lower rate can consider reducing the size of the site they occupy.

6. In the circumstances, His Excellency the Governor regrets that he cannot accept your representations on the grounds of hardship or depart from Government's intention to declare Rennie's Mill Village a cottage resettlement area and to collect fees from those permitted to occupy sites there. The residents can, however, rest assured that Government will continue to bear their welfare in mind and to treat them, so far as amenities are concerned, on the same basis as other occupants of cottage resettlement areas."

On 28 June 1963, it was notified, by publication in the Gazette, that in exercise of the powers conferred by the Resettlement Ordinance 1958 the Governor had set aside Rennie's Mill as a cottage resettlement area, with effect from 1 January 1964.

Thereafter, the colonial administration issued, and the residents of Rennie's Mill accepted, in accordance with the provisions in that behalf contained in the Resettlement Ordinance, occupation permits in respect of their respective premises. Each occupation permit described Rennie's Mill as a Cottage Resettlement Area; specified the premises to which it related and their permitted use; specified the permit fee and the date for its payment; and specified the dependants authorised to reside in the premises. These occupation permits were expressed to be granted subject, among other conditions, "to the General and Special Conditions set out overleaf". The operative words of each occupation permit reads as follows:-

"Permission is hereby given to the Permittee to maintain and occupy the structure erected or to be erected on the above site for the following purpose: [e.g.] Domestic."

Each occupation permit contained a declaration on the part of the "permittee" that he fully understood the conditions concerning the premises which he intended to occupy; namely (1) that his permit might be terminated (a) without notice on breach of condition; (b) by 1 month or 3 months' notice in writing; (2) that in the event of the premises having to be cleared, no compensation whatsoever would be paid to the "permittee". (Despite the apparently precarious nature of the right of the "permittee" to occupy his premises, he was allowed by the colonial administration to "assign" that right to a purchaser, who, if he was to be accepted as a "permittee" in place of his "assignor", had to make the same declaration: the evidence reveals the colonial administration's reason, in allowing such "assignments" in the case only of this particular cottage resettlement area, which was that such "assignments" would "diffuse a political dominant community".) The "General Conditions of Permit" set out on the reverse of the occupation permits read as follows:-

"GENERAL CONDITION OF PERMIT

1. The grant of this permit or the occupation of the site by the permittee shall not in any circumstances be deemed to constitute a tenancy by the permittee or by any other person.

2. The permittee shall -

(a) pay the permit fee on the appropriate fee day;

(b) keep the permit framed and exhibited inside the structure in a conspicuous position;

(c) permit any authorized officer to enter any such building at any reasonable time for the purpose of inspecting it;

(d) keep any building on the site in a clean, tidy and hygienic condition and carry out any cleansing or repairs directed by an authorized officer;

(e) conform with the requirements of the Malaria Bureau.

3. The permittee shall not -

(a) permit any person other than those named in the permit to reside in any building erected on the site without the permission in writing of an authorized officer;

(b) assign, sublet, transfer or leave the premises vacant for a period exceeding two weeks without the permission in writing of an authorized officer;

(c) use any such building other than *as a private dwelling house without the consent in writing of an authorized officer;

(d) alter or make any additions to any structure or site within the Resettlement Area without the previous written consent of an authorized officer;

(e) do or permit to be done on the site or any part thereof anything which might be or become a nuisance, annoyance, damage or distrubance to the occupiers of other premises or of other property in the neighbourhood or in any way against the law of the Colony, including the Dangerous Drugs Ordinance (Cap. 134) and the Protection of Women and Juveniles Ordinance, 1951;

(f) permit to be brought into any building on the site any arms, ammunition, gunpower, fireworks or other explosives or inflammable goods (other than a reasonable quantity of kerosene for the permittee's own domestic use).

4. The permit is subject to the Resettlement Ordinance, 1958 and to all regulations made thereunder and may be determined -

(i) by the competent authority without notice on breach of any of the above conditions; or

(ii) by either party on [one or] three months' notice in writing expiring on a fee day.

5. On any determination, any building or erection not removed from the site may be forfeited to the Crown.

6. Any notice required to be served on a permittee or on a dependant shall be sufficiently served if sent by ordinary post addressed to him at the building described in this permit or left there with an inmate.

*NOTE: This phrase may be varied to permit the use of the premises for non-domestic purposes or for mixed domestic and non-domestic purposes."

On 1 April 1973, the Hong Kong Housing Authority became the statutory body responsible for the control of cottage resettlement areas. This made no material change in the position of the residents of Rennie's Mill; but in 1988, 15 years later, there *was* a change, and a most material one. The colonial administration decided to create a new town at Junk Bay, a decision which, if carried into execution, would obliterate the settlement at Rennie's Mill altogether. Protests by the residents, founded on the promises which they claimed had been made to them by the colonial administration in its communications made in June 1961 (all of which I have set out in full above), were of no avail. The Hong Kong Housing Authority did promise to make ex gratia payments of compensation, but persisted with its plans for redevelopment of the whole area (including Rennie's Mill) and, in 1995, started to serve notices to quit on the residents. Many of them, unhappy with the decision to turn them out of their premises, or with the amount of the ex gratia payments offered, or both, instituted proceedings for a judicial review of the Hong Kong Housing Authority's decision to serve them with notices to quit. These were the applicants in the proceedings before the judge when he made his order of 27 June 1996.

The law

The relevant principles of law engaged on the facts set out above may be stated as follows.

1. When an owner of land ("the owner") permits another ("the permittee") to occupy part of the owner's land, the permit may be revoked by the owner in accordance with the terms of any contract made between the owner and the permittee, or in the absence of any such contract, on reasonable notice given by the owner to the permittee.

2. However, if the court concludes that the assertion by the owner of his legal right to determine the permit is unconscionable, it will grant such relief to the permittee as may be just and equitable; for example, in a proper case, it would be open to the court to restrain the revocation of the permit or to allow the revocation

of the permit to take effect only on payment to the permittee of appropriate compensation.

3. Such cases would include a case in which the permittee has incurred expenditure on the land he was permitted to occupy.

4. But in such a case, the permittee in incurring such expenditure must believe that he already owns, or would be granted by the owner, sufficient of an interest in the land to justify the expenditure.

5. A permittee who improves land in which he *knows* he has only a bare permission to occupy the land will not be allowed compensation for his expenditure when the owner revokes his permit.

6. Even where the permittee *does* believe that he already owns, or would be granted by the owner, sufficient of an interest in the land to justify his expenditure, he will not be allowed compensation for that expenditure unless the owner has induced or encouraged that belief.

7. The court will not treat as unconscionable the assertion by the owner of his legal right to determine the permit if such a restraint on the owner's legal right would prevent the exercise of a statutory discretion or the performance of a statutory duty.

(Authority for all this may be found in *Dillwyn v. Liewelyn* (1862) De G.F & J 517, in which the permittee had built a wharf and warehouse on the owner's land at the owner's request, and the owner was restrained from revoking the permit on the faith of which the permittee had built the wharf and warehouse at his own expense; *Ramsden v. Dyson* (1865) 1 LR 1 HL 129; in which Lord Kingsdown, in a dissenting speech now generally accepted as authoritative, says this:-

> "The rule of law applicable to the case appears to me to be this:
>
> If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without

objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation.";

Plimmer v. Mayor, etc. of Wellington (1884) 9 App. Cas. 699 (a case heavily relied on by Sir John Swaine, S.C. in his excellent argument for the appellants) in which the permittee, at the request and for the benefit of the owner, incurred large expenditure for the extension of a jetty and the erection of a warehouse on land which he occupied on a revocable permit from the owner, and it was held that in those circumstances the permittee had acquired an indefinite, that is, practically a perpetual, right to the jetty; and *Western Fish Products Ltd. v. Penwith D.C.* [1981] 2 All ER 204, in which it was held that the exercise of statutory powers could not be fettered by promises made by local government officers. There are many more cases in which the above principles have been stated and applied but I do not think that any useful purpose would be served here by further citation of authority.)

Did the 1961 communications preclude Hong Kong Housing Authority from revoking (by notices to quit given in 1995) the permits granted to the Rennie's Mill residents?

I have no doubt that they did not do so. It is not suggested that any of the residents had any rights other than as "permittees" before 1961, and I am quite unable to find anything in any of the 1961 communications which altered their status in any way whatever. Indeed, the 1961 communications made it perfectly clear that the colonial administration intended to treat Rennie's Mill in exactly the same way as any other cottage re-settlement area and to apply to it the provisions of the Resettlement Ordinance, 1958. If a resident at Rennie's Mill *did* believe, despite what he was told to the contrary, that he would achieve full rights of ownership (greater than those of a lessee under what used to be called a "Crown" lease, as Sir John Swaine, S.C. was compelled to submit) of any land on which he had erected or proposed to erect a building for his own use, he cannot possibly claim to have been encouraged in that belief by the 1961 communications. All that the 1961 communications did, and all they were intended to do (as quite clearly appears on their face) was to allay the concerns of the residents that there was an imminent risk of their forcible eviction to facilitate further development; and, in fact, it was not until 34 years after 1961 that the first notice to quit was issued. "Indefinitely" in the communication of 5 June 1961 clearly did not mean "forever", even if that is what it *did* mean in *Plimmer's* case, cited above. Even a

"Crown" lessee could have been disturbed in the enjoyment of his premises by the exercise of statutory powers under the (Crown) Lands Resumption Ordinance, Cap. 124. The suggestion that the effect of the 1961 communications was to confer or promise to confer on the residents of Rennie's Mill *greater* rights than those enjoyed by a "Crown" lessee is risible. In any case, the then officers of the colonial administration, even the Governor, could not by those communications have fettered the right of their successors to implement the provisions of the Resettlement Ordinance, including those for revocation of permits, in the case of Rennie's Mill (not that the 1961 communications disclose any such intention to fetter such right; rather, they disclose the contrary intention). It follows that none of the applicants have, or ever have had, any "eligibility" at all to make any claim against the Hong Kong Housing Authority for "damages" (I assume this term is wide enough to include a claim by an applicant for monetary compensation for the loss of his permit to reside at Rennie's Mill). There has been no "breach of promise" or abuse of power by the Hong Kong Housing Authority; and the residents of Rennie's Mill do not have, nor have any of them ever had, any legitimate complaint that it was unconscionable of the Housing Authority to seek to redevelop the area 35 years after it became a cottage re-settlement area with the residents enjoying for all those years only those rights conferred on them by their occupation permits.

The proceedings below

None of the original applicants applied for relief against the Hong Kong Housing Authority in *private* law proceedings. Many of them applied in *public* law proceedings for a judicial review of their cases in the manner prescribed by Order 53 of the Rules of the High Court. Other residents did not. Acting in person, they approached the court, by originating or ordinary summonses, after the judge had made his order of 27 June 1996 but before he had finally disposed of all the issues as to "eligibility" and "quantum of damages" raised in the public law proceedings instituted by the original applicants. The judge, faced with this, tried to deal with these applications by ordering, on 18 March 1998, that the issuers of all such summonses "be treated as new applicants in the judicial review." But this was wholly irregular. A similar procedure was adopted by Findlay, J. in *Nguyen Tuan Tuan Cuong v. Secretary for Justice* [1999] 1 HKC 242. This court gave judgment in that case on 11 November 1998, so the benefit of its judgment was not available to Sears, J. on 18 March 1998. *Nguyen's* case demonstrates that (contrary to what Findlay, J. had thought) it is simply not possible to add, as parties to a judicial review, other parties who have

never yet themselves applied, in accordance with the provisions of Order 53 of the Rules of the in High Court, for a judicial review of their own cases. This irregularity is incurable. Sears, J. had no jurisdiction to entertain public law proceedings instituted by an applicant otherwise than in accordance with the provisions of Order 53. However, having decided to entertain such prooeedings, the judge ought not to have summarily dismissed a large number of them, some in less than a minute. He left many of these applicants with the impression that he had pre-judged their cases without hearing them. This was most undesirable. Justice must be seen to be done, even to those supplicants whose cases are, in the opinion of the judge, wholly without merit. As it happens, there being no-one with any legitimate claim to any relief, no-one has suffered any detriment from the judge's manner of conducting the various hearings he held on "eligibility" and "quantum", in the course of which he attempted to create and administer his own scheme for the determination of such claims. But I would express the hope that such a mode of proceeding will never again be attempted.

Conclusion

The judge held (correctly) that all the notices to quit of which the applicants had complained were "valid" (see his judgment reported at [1996] 2 HKLR 293, at p.301I). So there was no peg on which he could properly hang any applicant's entitlement to "damages". There was no breach of contract or tortious behaviour by the Hong Kong Housing Authority here which could have justified an award of "damages" in these public law proceedings. His order of 27 June 1996 was accordingly misconceived and the present appellants cannot rely on it, as they must do, in order to found their claims to monetary compensation, or as the case may be, to greater monetary compensation. Insofar as many of the applicants originally before the judge *have* recovered compensation, they were fortunate, in that, although the judge's order was plainly wrong, the Hong Kong Housing Authority (no doubt for administrative and political reasons, and mindful of the fact that it was the taxpayer who would foot the bill anyway) chose not to appeal against it. The judges, and the administration, would do well to remember that it is for the executive to run the country, not the judges, whose powers, valuable and important as they are, are limited to powers of review. What, if anything, ought to have been done for the residents of Rennie's Mill was and is a matter for the administration, not the courts.

Result

I would dismiss all these appeals, but with no order as to costs.

Mayo, J.A.:

Sir John Swaine mainly places reliance upon the announcement made by Mr. Morrison, Commissioner for Resettlement dated 5th June 1961 to support his contention that the residents of Rennie's Mill had been given an irrevocable licence to continue occupying their cottages in perpetuity. He also placed some reliance upon the letter written by Mr. Morrison on 15th June responding to a petition which the residents had addressed H.E. The Governor.

I have no doubt that it is not possible to obtain from these documents any such intention. Read in context all they amount to is a statement that the area will be managed in a similar way to other cottage resettlement areas and that residents would be allowed to continue residing in their present buildings indefinitely. What was meant by "indefinitely" was for an undefined or indeterminate period of time. Clearly, if circumstances changed it would be open to the Government to serve on the residents Notice to Quit within a reasonable time:

It is not possible on any sensible interpretation of the documents to read into them what would amount to an intention to convey to the residents a fee simple interest in the land upon which the buildings were erected. This would be the effect which would be achieved if Sir John's interpretation of the documents is the correct one. In addition to this if this amounted to a promise to occupy the land in perpetuity it would not be possible for the Government to institute proceedings to compulsorily purchase the land in the future. This would confer upon the residents more valuable rights than those enjoyed by the holders of crown leases.

It is necessary to consider the announcements in the context of the surrounding circumstances.

In 1964 the residents were required to become the permittees of occupation permits which were issued by the Government. One of the terms of the permits was that it was terminable on three months notice given by either party. I do not think that it is open to the residents to argue that the occupation

permits were subject to any promise which had been made by the Government for them to have further security of tenure.

The occupation permits were entered into subsequent to the alleged promises and the provisions for the determination of the permit were clearly inconsistent with what is now being claimed by the residents.

I have no doubt that the declaration made by Sears, J. in his order dated 27th June 1996 that it was unfair for the Housing Authority to issue Notices to Quit on 19th March 1996 and that this amounted to an abuse of power was misconceived. I am also satisfied that the Judge was in error in ordering that damages should be payable by the Hong Kong Government for the breach of the promise it had allegedly made.

It does however remain a fact that the Government did not see fit to appeal against this adjudication. Indeed there were further proceedings when awards of damages were made to the residents who established their eligibility according to the criteria laid down by the Judge.

The Judge also made an order the effect of which was to allow residents who had not been parties to the Judicial Review proceedings to be joined as parties so that they might also prosecute claims for damages. This also was misconceived as the joinder of additional parties to Judicial Review proceedings is not permitted. *Nguyen Tuan Cuong and others v. Secretary for Justice* [1999] 1 HKC 242. All but one of the Appellants in the present appeal are parties who were thus joined.

The present appeal is divided into two parts. The first comprises Appellants who are aggrieved that the Judge held that on the criteria he laid down they were not eligible to receive any compensation. The second is made up by Appellants who complain that the amount of compensation awarded to them was inadequate.

Miss Gladys Li submitted that as a consequence of the way in which the proceedings had been conducted the Housing Authority had not been afforded any opportunity in respect of these Appellants of presenting their defence to the claims which were now being made in this appeal.

There is undoubtedly some merit in this submission. However on the basis that the so called promises made by the Government do not amount to a proprietary estoppel or give rise to any claim for damages which could properly be

awarded on a Judicial Review this does not create any problem. In my view none of the litigants was entitled to any award of damages. Certainly the present Appellants who were not properly joined as parties are not entitled to be deemed eligible to receive damages or for those who did receive an award to receive any additional amount.

This is sufficient to dispose of this appeal. In my view this appeal should be dismissed.

Rogers, J.A.:

I agree that these appeals should be dismissed.

The first matters which need to be considered in this Appeal are whether the Applicants were entitled to relief on proceedings to judicially review the decisions to issue Notices to Quit and whether they, or any of them, are entitled to damages on any of the bases which have been put forward.

In determining that two of the important questions that arise are whether any statements or promises were made which gave rise to legal rights and, if so, what were the nature of those rights.

Without setting out all the facts which have been referred to in the judgment of Godfrey, J.A., I wish to refer briefly to some of the facts.

The "Promises"

It is necessary to consider the statements that have been relied upon by the Appellants and in doing that, their context is, of course, important.

The announcement that Rennie's Mill was to be taken over by the Resettlement Department and administered as a resettlement area was apparently made by way of a press release on 2nd June 1961. The announcement started by referring to a survey that would be made to see what improvements could be made to the facilities in the way of providing amenities such as roads, markets and sanitary facilities. In relation to the residents of Rennie's Mill, the announcement said 3 things;

(a) Some structures may have to be moved to make way for the new facilities;

(b) It was not proposed to move any of the inhabitants of Rennie's Mill;

(c) No new families would be allowed to take up residence in the area unless they qualified for resettlement.

On the face of it, there would thus seem to have been little cause for anxiety that the inhabitants would not be allowed to live in Rennie's Mill; but there was obviously cause to consider that some of the residents would have to move to make way for new amenities.

<u>The letter of the 5th June 1961</u>

This was followed 3 days later by one of the 2 most important documents in the case, that is the letter of 5th June 1961. It was written by the Commissioner for Resettlement. Although there is no apparent indication as to any specific addressee, it was clearly intended for the residents of Rennie's Mill. The letter of the 5th June started by saying that there had been rumours that the Government planned to build multi-storeyed resettlement blocks and that some residents were concerned that they would be forced to move away from their "existing comfortable accommodation". The letter then went on to say that the Government did not intend to build any multi-storey blocks in the area. Then followed the crucial sentence *"Most of the residents in the area will be allowed to continue to reside in their existing buildings indefinitely."*

Despite that letter, the residents of Rennie's Mill were still concerned. They sent a Petition to the Governor. The Petition recited some of the history behind the establishment of Rennie's Mill. The residents were refugees and initially the Government had provided basic food. After the Government stopped providing food, there were some charities that filled the gap, at least to some extent. The point was made that the refugees were moved to Rennie's Mill which was designated a refugee camp and said to have been allotted for the refugees' permanent residence. The refugees had constructed infrastructure such as roads, bridges and wells. The first request made in the Petition was that the title Rennie's Mill Refugee Camp should be retained permanently and the area should not be turned into a resettlement area. In that context, it was said that the residents

would lose their status as refugees and would not be entitled to further relief. The Petition referred to a relief fund that would be available through the World Refugee Year Scheme. The point was also made that the residents would be forced to pay permit fees to live in the resettlement area. Apart from concerns expressed about new residents being allowed to live in the area, the Petition went on to talk of structures that would have to be removed. The point was made that although promises had been made that alternative sites would be made available and that there would be other assistance, the residents had no funds to build new houses.

15th June 1961

The Commissioner for Resettlement wrote a letter dated the 15th June 1961 to Lau Tsz Kwu in response to the Petition. It was clear from the letter itself that it was written on the Governor's direction.

The letter started by stating that the inhabitants of Rennie's Mill should have no reason to be disturbed or worried about the decision to make the area a resettlement area. That sentiment was repeated in the final paragraphs of the letter. The Government thus made clear that the decision to change Rennie's Mill from a refugee camp to a Resettlement Area would not be reversed. The second paragraph of the letter referred to the concerns relating to the welfare of the inhabitants.

It is the third paragraph of the letter upon which reliance is particularly placed in this case. That read :-

> "Some residents have expressed anxiety about the removal of existing buildings. I am to assure you that, as the Government has already made clear in public statements, this removal is to be limited to the very minimum. In the few cases where such removal proves to be necessary, arrangements will be made to reprovision buildings without hardship to the individuals affected. I am directed, however, to assure you that no domestic buildings will have to be re-sited for some considerable time."

The Chinese version of the letter of 15th June 1961 differs from the English version of the letter in that in the English version, it is stated :

"In the few cases where such removal proves to be necessary, arrangements will be made to reprovision buildings without hardship to the individuals affected."

In the Chinese version, the passage reads:-

"In the few cases where such removal proves to be necessary, satisfactory arrangements will be made to re-build the place of residence for the residents within the same area, so as to save them from the hardship of homelessness."

The letter went on to refer to other matters such as the schools and the improved community and health facilities.

Paragraph 7 of the letter dealt with the question of the Permit Fees. It stated that residents would only be required to pay at the rates applying to outlying cottage areas. It was said that in respect of small residential huts that would be $5 or $10 per quarter. That paragraph concluded by saying that the Governor did not consider that *"... the payment of these small fees, which is a recognised requirement throughout the Colony for the occupation of Crown Land, could be held to constitute any hardship."*

The letter concluded, as I have stated, that the Governor wished to assure the inhabitants that they had no need for concern as to their future.

Further history

It is the letters of 5th and 15th June 1961 which form the basis of the case on behalf of the Rennie's Mill inhabitants. I do not propose to refer to the further history of the matter in any detail since, in my view, it does not assist the Appellants in any way.

There was a further Petition in 1963. The response to that Petition is set out in the judgment of Godfrey, J.A. and I do not consider that anything in it would further the Appellants' case on this appeal.

As has been referred to in the previous judgments, from 1964 onwards the Government issued Occupation Permits in accordance with the provisions of the Resettlement Ordinance. These, too, do not assist the Appellants. Indeed, on the contrary, they would indicate that the Appellants' case

was, on any footing, misconceived. The material terms are short. They are in both English and Chinese. They state bluntly that the Government is entitled to terminate the licences to occupy the premises at Rennie's Mill on 3 months' notice. As was pointed out in the course of argument, at least in some instances, the holders of the Permits signed both the English and Chinese versions of the terms in the Permits, thus acknowledging this right of termination. This Court is only able to ignore the relevance of these Permits for the purposes of this case on the basis that those who signed them may not have read or appreciated their contents.

Sir John Swaine, S.C. drew attention to the evidence of Wong Pei Chun, who was referred to in the first Judgment below as the "lead" Applicant. In his evidence, he stated, among other things, that even those who had not been residents of Rennie's Mill in 1961, knew of the promises which had been made by the Government and that they purchased cottages because they knew that Rennie's Mill was a "permanent cottage area" before they made their purchases, Indeed, it seems that when Occupation Permits were issued in 1964, copies of the letters of the 5th and 15th June 1961 were included in clear plastic folders and given to those receiving the Occupation Permits. This was said to enhance the effect of the so-termed "promises". However, whatever general reputation may have existed, either by reason of newspaper or other media reports, or even because of rumours and word of mouth, the effect of the so-called "promises" cannot be enhanced because of misconceptions induced by inaccurate repetition.

It is true that the residents of Rennie's Mill no doubt undertook considerable work in bettering the environment and in providing both personal and communal facilities. Much work had indeed been carried out prior to 1961 and that was the subject of much of the representations which were made to Government in 1961.

The first applications for Judicial Review

On the 21st March 1996, Mr. Wong Pei Chung and 21 other Applicants applied for an Order of certiorari to quash the Decision of the Housing Authority made on the 28th December 1995 to issue Notices to Quit to all the residents of Sections 11 and 12 and Tai Wan New Village, Rennie's Mill. Alternative relief applied for included an order of prohibition alternatively an injunction to prevent any action being taken in pursuance of the Notices to Quit and a declaration that the Decision was null and void. Damages were also sought.

In June of the same year, some 60 further Applicants applied for similar relief but in respect of Notices to Quit of the 19th March 1996 in relation to Sections 1 to 10.

These applications were all heard together in a hearing commencing on the 25th June 1996.

The June 1996 Decision

In the judgment dated 27th June 1996, the Judge held that the decision to issue (and the service of) the Notices to Quit dated 28th December 1995 (19th March 1996 in respect of the later Applicants) was unfair and amounted to an abuse of power. He made a declaration to that effect. Paragraph 1 of the Order went on:-

> "... this gives the Applicants who were residents at Tiu Keng Leng on the 5th June, 1961 the right to damages for breach of the promise by the Hong Kong Government that they would not be moved away."

The issues relating to individual Applicants' eligibility to claim for damages and the quantum of damages were left to be assessed at a later date.

After reviewing the developments which were to take place at Rennie's Mill and the statutory provisions the Judge said at page 11 of his Judgment:-

> "Originally, the applicants sought to challenge the validity of the Notices to Quit and prevent the Government acting on them and thereby frustrating the redevelopment proposals. It was recognised, however, by Mr. Warren Chan, Q.C., appearing as he does for the applicants, that if the letters of 1961 amounted to a promise which gave the villagers certain legal rights, then the only remedy they have was one which gave them damages or, as it has been described, compensation. Furthermore, no court, faced with the substantial benefits which the redevelopment proposals give, could possibly have countenanced a remedy which would have prevented the Housing Authority exercising its statutory function of providing new housing which is much needed."

On that footing, it might be supposed that the applications for relief by way of judicial review of the decision to issue Notices to Quit would have been dismissed. But the decision to grant relief by way of judicial review was founded upon the premise that there had been an abuse of power because the decision to issue the Notices to Quit infringed rights acquired by the residents of Rennie's Mill. The Judge held that because of the statements in the letters of the 5th and 15th June 1961:-

> "In my judgment, these letters constituted a promise by the Hong Kong Government that the residents of TKL would not be moved away. In law, the Government was granting them a licence to use and occupy the land indefinitely subject only to them satisfying the terms and conditions imposed on them by the grant of Occupation Permits."

On the face of the matter, even if the Government had made such a promise, as a matter of private law, it was a promise without consideration and could not constitute a binding agreement which would be enforceable as a contract. As far as the law of contract is concerned therefore, they would have been licences which could be terminated on reasonable notice or 3 months' notice according to the terms of the Occupation Permits.

On page 14 of the judgment, the Judge held that by virtue of the 1961 promises, the residents had a legal right to remain on the land. In referring Lord Templeman's speech, *In re Preston* [1985] 1 AC 835 at pp.866-867, the Judge cited and underlined a passage in the judgment which referred to a right to an injunction or damages based on breach of contract or estoppel by representation against an authority other than the Government. Thus far it would appear that the judgment must have been based upon a right acquired by estoppel. But the elements which gave rise to that estoppel were never precisely identified.

The Judge then went on to hold that the conduct of the Housing Authority in serving Notices to Quit amounted to an abuse of power. The judgment continued that because the promises had been made by the Hong Kong Government in its capacity as Government rather than as a landlord, the matter was justiciable by way of judicial review. Since the only remedy which the Court could sanction in the circumstances of the case was one of damages, the Judge held that the Applicants were entitled to damages, as a matter of principle.

Later Decisions

In March 1998, the Judge heard applications for compensation. In his Judgment of the 19th March, the Judge commenced by saying:-

> "Those who lived there were not land owners. They only had a licence to occupy a portion of the land and the occupation was governed by the terms and conditions of the occupation permit."

It is difficult to understand how the case proceeded any further. As I have already pointed out the terms and conditions of the Occupation Permit provided that the licence to occupy the premises was determinable on 3 months' notice. The case could only have proceeded by ignoring what was one of the very few terms and conditions in the Occupation Permits.

Be that as it may, the Judge then held that claimants had to prove 2 things:

(a) that they had been resident in Rennie's Mill at the time of the promises in June 1961;

(b) that they had continued to be ordinarily resident there until at least the 4th April 1995.

The previous day the Judge had made an Order that all summonses which had been filed after the commencement of the hearing on the 9th March 1998 should be treated as applications for judicial review under MP 114 of 1998 and the issuers should be treated as new applicants in the judicial review and "may claim compensation from the Respondent if they are eligible."

Thereafter, over the course of the next few months, the Judge proceeded to determine the eligibility for and quantum of damages payable to all applicants on the basis which he laid down in the March 19th decision, no matter when their applications had been made.

The procedure

The original Judgment in 1996 comprised 82 Applicants. By 1998, the number of Applicants had swelled by a further 632. The Judge below was thus faced, not merely with a daunting task, but one which might, on some views, be considered scarcely manageable. He took a robust course. In doing so, it is clear that he was attempting to dispose of the applications in a fair and just manner as expeditiously as was possible with a view not only to benefiting the Applicants where possible, but to disposing of their cases with the least possible delay and expense to all parties. Unfortunately, in adopting the course of permitting the joinder of Applicants to the judicial review after the initial judgment, and indeed, in some cases, the second judgment had been given, some of the Applicants were prevented from putting forward their cases in the manner they wished because points of principle had already been decided. This was an unfortunate consequence of what was an imaginative way of dealing with what would have been a logistically highly complex case. In the outcome, in my view, it has made no difference to the result of the cases.

The appeal

There were a total of 86 Appellants. 23 of the Appellants sought to appeal in respect of the quantum of damages which had been awarded. 63 of the Appellants appealed against the decision that they were ineligible for relief. In respect of all matters, however, it is necessary to establish the basis upon which the Appellants would be entitled to relief. As Godfrey, J.A. has pointed out the Housing Authority has not appealed any of the decisions in the Court below. Nevertheless, if none of the Appellants are entitled to any relief, all the appeals must of necessity fail.

What did the letters of 5th and 15th June mean?

The crucial question in this appeal is therefore what rights could the Appellants establish, either on the basis as held in the judgments below or on the cases which were sought to be argued on the Notices of Appeal and in the draft amendments to the Notices of Appeal which were sought to be allowed at the hearing.

As has been referred to above, the foundations of the Appellants' case are the letters of 5th and 15th June.

The first thing which is apparent from the letters is that it is impossible to spell out the promise of any right of property held out to the residents of Rennie's Mill. The letter of 5th June whilst stating that most of the residents would be allowed to continue to reside in their existing buildings indefinitely immediately juxtaposed that with a reference to the future requirement to pay a Permit Fee. Neither the words "be allowed to continue to reside" nor the existence of a permit fee are compatible with a right of property being promised. The letter of the 15th June refers to arrangements that would be made to re-build residences for residents who are required to move so as to save them from hardship. The Chinese version is more explicit in using the word "homelessness". Clearly, in neither instance was the Government promising that the residents of Rennie's Mill would be permanently entitled to a right of property. If that were not sufficient, the terms of paragraph 7 of that letter which I have quoted above would seem to me to be conclusive in the matter.

Whilst it is unattractive to analyse a statement by the Government as to how it will treat its subjects to an extent where it might be thought that the rights of the citizens were being denied by pernickety attention to detail, the use of the expression "Most of the residents in the area" in the 5th June letter undoubtedly leaves open the important question as to which persons those residents are. If that is not certain, the statement is not certain as to any particular individuals and no rights could, it seems to me, be founded thereon. The same difficulty seems to me to be expressed by Mr. Lau Tsz Kwu, to whom the letter of the 15th June was addressed. In a letter dated 29th May 1996 which is exhibitied to one of the affirmations of Mr. Wong Pei Chun, Mr. Lau himself says that despite the letter of the 5th June "the threat of clearance in the long run still existed and the residents were still worried and anxious." Giving all proper allowance for the fact that Mr. Lau was not himself a party to these proceedings and that he was apparently resident overseas at the time of writing the letter and that in any event, his personal views as to the meaning of the letter of the 5th June would be inadmissible in evidence, nevertheless, the doubts which are expressed and the reasons given for the Petition of the 8th June accord with the view which I have formed of the statement in the letter of the 5th June.

In the translation which has been provided of the letter of 5th June 1961, the word "indefinitely" has played a great part in the reasoning in the judgment below and in the argument in this Court. It must be remembered that the announcement itself was in Chinese and the characters “無限期” have the

implication of "forever" or "without limit in duration". I doubt in the context, however, that the words could really mean any more than for the duration of the life of the buildings. Emphatic though the expression might seem in the context, it was a reference to the use of existing facilities and not to the use of the land on which they stood.

In my view, the best, from the point of view of the Appellants, which can be made of this statement, is that the Government would not, in seeking to better the environment and facilities at Rennie's Mill, cause any of the residents to be homeless.

What rights, if any, arise from the statements?

The proceedings which had been commenced were for judicial review. A claim for damages may be included in an application for judicial review where the claim is sustainable in an action begun by the Applicant at the time of making the application. This is permissible under the provisions of Order 53 rule 7. In order for the Appellants to have a valid claim which is sustainable, it would, therefore, be necessary for them to establish their right, first of all, to relief by reason of judicial review and secondly, their right to a private law claim which would entitle the Appellants to damages. Whereas the time may come at some stage in the future whereby damages may be awarded as a judicial review relief as such, the remedies which are at present available in judicial review, aside from circumstances where a cause of action for damages exists, do not include claims for damages.

In my view, the Appellants have neither good claims for judicial review nor do they have any claims whether by reason of a right of property or a personal right which would entitle them to damages.

The right to relief by way of judicial review

The Judge below founded his judgment that the Appellants were entitled to relief by way of judicial review, as I have said, on the basis that the Government had acted unfairly to the residents of Rennie's Mill in that their actions amounted to an abuse of power. In my view, the Appellants' argument in that respect is unsustainable. The letters of 5th and 15th June 1961 were clearly predicated upon the Government's wish to maintain living standards and amenities and facilities for the residents. The statement in the letter of the 5th June

1961 that *"Most of the residents in the area will be allowed to continue to reside in their existing buildings indefinitely"* was, as I have indicated, too imprecise to be regarded as a definite statement in relation to any specific person. The promises in the letter of the 15th June 1961 were promises not to make the residents homeless or live in overcrowded conditions and, if anything, to improve the living conditions where possible. The basis for attacking the Housing Authority's decision to clear Rennie's Mill and issue Notices to Quit in this regard would be the statement in the letter of the 15th June that any existing residences would be rebuilt in the same area. But this clearly meant that so long as Rennie's Mill remained a Resettlement Area, there was no intention on the Government's part to force the residents to move. It would have been contrary to good, not to say rational, government for the Government to have bound itself to keep Rennie's Mill as a Resettlement Area forever. It would be alarming if what might have been considered comfortable accommodation in relation to refugees who had built their own houses with little or no resources on a barren piece of land in one generation would not be considered unacceptable in terms of standards of living in the next. Absent any right of property which I deal with below or as the Judge held, a legal right to remain on the particular land, the proper and orderly termination of the right of residence after 34 years by the service of the Notices to Quit was not, in my view, an improper action or an abuse of power.

This aspect of the case was appreciated by the Judge. Indeed, the passage from page 11 of his Judgment which I have quoted above in reality says the same thing. But the Judge held that the right to relief by way of judicial review arose on the basis of *Re Preston*. I do not consider that could be correct in view of the holding that no Court would interfere with Government action so manifestly in the public interest. The statement in *In re Preston* at page 866G-H says no more than that unfairness amounting to an abuse of power might be constituted if a Government servant took action under statutory authority in circumstances where, if it were other than the Government authority, the person would be entitled to an injunction or damages based on breach of contract or estoppel by representation. There is of course here no suggestion of any contract. Nevertheless, even if there were, it would be necessary to show that residents had some legal right which was infringed by the Decision or act sought to be reviewed.

Did the residents of Rennie's Mill have a legal right to remain in Rennie's Mill as held by the Judge and in addition or in the alternative as argued on this appeal, a right of property?

The argument before this Court was that by reason of the promises made in 1961, circumstances had arisen whereby the residents of Rennie's Mill should be regarded as having a right of property.

In my view, for the reasons I have given in relation to the statements which were made in 1961, I do not consider it is possible to aver any right of property.

As has been pointed out in the previous judgments, the right of property which has been argued to have been acquired by the residents of Rennie's Mill would seem to be a greater right than would be acquired by any lessee of a Government lease in Hong Kong. That consideration, it seems to me, is most relevant in considering how a right might be defined or onforced once it were established that the person affected had acquired such a right.

The argument here rests solely upon a right acquired by estoppel. The starting point in considering this form of estoppel is the decision in *Ramsden v. Dyson* (1866) L.R. 1 H.L. 129. Although the Law Lords disagreed as to the result of the case, it would seem that the applicable principle was not in dispute even if Lord Cranworth expressed the proposition differently at pp. 140-141 from the way in which Lord Kingsdown did at p.170.

I do not propose to quote from *Ramsden v. Dyson* because a fuller and more analystical approach was adopted by Fry, J. in *Willmott v. Barber* (1880) 15 Ch. D. 96 at p.105 where he said:-

> "A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your

legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiffs mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do."

The cases on this form of estoppel were considered by Oliver, J. in *Taylors Fashions Ltd. v. Liverpool Trustees Co*. [1982] 1 Q.B. 133. At page 151H, he said:-

"Furthermore the more recent cases indicate, in my judgment, that the application of the Ramsden v. Dyson, L.R. 1 H.L. 129 principle - whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial - requires a very much broader approach which is directed rather at ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly, or unknowingly, he has allowed or encouraged another to assume to his detriment than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."

And at page 155C:

"The inquiry which I have to make therefore, as it seems to me, is simply whether, in all the circumstances of this case, it was unconscionable for the defendants to seek to take advantage of the mistake which at the material time, everybody shared, and, in approaching that, I must consider the cases of the two plaintiffs separately because it may be that quite different considerations apply to each."

Although the test formulated is whether it is unconscionable for the Defendant to insist on its legal rights, the more formalised test of Fry, J. nevertheless remains a good starting point.

In my view, the Commissioner for Resettlement did not make representations as to ownership of property or that the residents of Rennie's Mill would be entitled to own their property. Still less were any such representations

repeated when copies of the statements were handed out with the Occupation Permits. Since the Occupation Permits were both in English and Chinese and clearly were in terms incompatible with ownership of property.

Neither do I consider that it can be said that the Government stood by knowing that the residents of Rennie's Mill were performing acts in relation to the land which were compatible only with their expectation of ownership of the land or a right to a permanent licence in ignorance that they were not to have these rights. In 1961, the residents were pointing to the fact that they had in effect built Rennie's Mill from a barren piece of land. That had taken place betwen 1951 and 1961. During that time, there is no dispute but that the residents were mere licensees. It has not been suggested that anything that was done by the residents of Rennie's Mill after 1961 was in any material way different from the acts that were done before.

In my view, therefore, the grounds for the reliance upon promissory estoppel which would give rise to a right equivalent to a proprietary right must fail The residents of Rennie's Mill can neither bring themselves within the terms of their lordships' statements in *Ramsden v. Dyson* nor within the criteria as analysed by Fry, J. nor can I see any ground for alleging that the Government's conduct was unconscionable.

The judgment in the Court below did not, however, extend to saying that the residents of Rennie's Mill had a right which justified protection as if it were a proprietary right. As has been pointed out by the Appellants, the criteria which the Judge held had to be satisfied in order to enable a resident to claim the right of damages was increased by the judgment in March 1998. In the June 1996 judgment, the Judge said at p.16:-

> "In my judgment the legal right given to the residents was personal to them. It cannot be sold or transferred. It covers only those people who were residing there. It does not cover those people who inherited. The promises were to give assistance to the residents who were there and not to permit low cost accommodation to be available to anyone who later settled there."

In the judgment of 19th March 1998, the Judge said at p.2:-

> "The applicant must prove that (a) he was resident in Rennie's Mill at the time of the promise in June 1961 ... And (b) that he continued to reside there until at

least April the 4th, 1995, the announcement of the clearance. Again, it does not matter if he was absent for certain periods as long as these were temporary, as long as he was still ordinarily resident there. Put in a simple way, he had to be living in Rennie's Mill as his home. There two conditions, if proved, would entitle a person to compensation."

The difference between the formulations of the residents' rights in the 2 judgments stems, in my view, from the impossibility of identifying what sort of personal right the residents of Rennie's Mill were said to have. The letter of the 5th June could give no personal right to individuals for the reason that no-one individual was promised anything. But even if that were the case, or together with the letter of the 15th June, the earlier letter could be said to have given the individual residents a right to remain in Rennie's Mill that could only have been so long as Rennie's Mill remained a Resettlement Area.

The residents of Rennie's Mill in 1961 could not claim that they had acquired a right to have the area maintained as Resettlement Area in perpetuity by reason of any promise given to them in their collective or representative capacity. As I have said to construe what was said at the time in that light would be to attribute to the Government an absurd decision contrary to good Government. Furthermore, for the reasons given by Godfrey J.A., I doubt that it would have been open to the Government to bind itself in that way.

It is also to be noted that there is no requirement laid down by the Judge that the Applicant should have expended money. This was a criteria in both the formulations of Lord Cranworth and Lord Kingsdown in *Ramsden v. Dyson.* Fry, J. put it that the Plaintiff must have expended some money or must have done some act (not necessarily upon the Defendant's land) on the faith of his mistaken belief. The only requirement stipulated by the Judge that the Applicant should have lived in Rennie's Mill. That, in my view, is not sufficient to raise an equity.

But even if it be supposed or could be proved that the Applicants did expend money on the land or build thereon, the Applicants' case must fail for the same reason as in respect of the proprietary claim. Even on the broadest conception of the principle, in my view, the Government has not acted unconscionably.

Conclusion

I appreciate that this Judgment will be extremely disappointing to the former inhabitants of Rennie's Mill. I have endeavoured to explain my reasons in legal terms. In the most simple terms, it might be said that the reason these appeals fail is that the letters in 1961 gave the residents no rights other than a licence to live in Rennie's Mill according to the terms of the Occupation Permits. Moreover, there is nothing wrong in the Government seeking to redevelop the land after 34 years so as to provide better living conditions for the whole community.

In my view, the applications to amend the Notices of Appeal should be refused and these appeals should be dismissed.

(Gerald Godfrey)	(Simon Mayo)	(Anthony Rogers)
Justice of Appeal	Justice of Appeal	Justice of Appeal

Sir John Swaine, S.C. & Mr. Beaumont (M/s. Fred Kan & Co.) for the Applicants (Appellants) in all appeals except CACV 282/98

Applicant (Appellant) in CACV 282/98, Mr. Billy Yeung Bee Lee in person

Miss Gladys Li, S.C. & Mr. Peter Ng (M/s. Simmons & Simmons) for the Respondent (Respondent) in all appeals