

Objection Hearing on Property Assessment Rate Charges in Malaysia

Sani Habibu Muhammad* & Mohammed Bakri ibn Ishak

Department of Environmental Management, Faculty of Environmental Studies, University Putra Malaysia (UPM)

*sanihabibu@gmail.com

Abstract

The Local Authority Act 171 of 1976 intended fairness by incorporating provisions for seeking redress by property owners who are not satisfied with rates imposed on them based on the assessed value of their properties. This redress is sought by means of filing objections to the local authority concerned, it is then studied and a fair hearing given to the appellant before a decision is taken. The study was conducted, using a semi structured-interview guide by interviewing the valuation officers about the various reasons for objections, Documents were sought to study past reasons filed by appellants and later triangulated with observation during hearing sessions of the local authorities to a point of saturation. It was found that greater proportion of objections were based on non satisfactory service delivery by the local authorities with only a few on in ability to pay.

Keywords: Local Authority, Act, Appeal and Decision.

1 Introduction

Property rating in Malaysia is constitutionally authorized by section 74 (2-4) of the Malaysian constitution as revised up to 2006 whose origin is traced back to 1801 although was then in an informal manner. The Act provides for valuation of hereditament/holdings for rating purposes using an appropriate valuation method in order to generate revenue for local authorities to enable them discharge their official obligations subject to approval from the state authority (Government, 2006). Appropriate valuation methods includes; direct rental valuation method, indirect rental valuation method, depreciated replacement cost method and profits/accounts method. Application of any of those methods depends upon the nature of the property in question, available comparable data, type of use, and location circumstance of the property. Thus, an in appropriate choice of valuation method could result in an erroneous value which could be a basis for disagreement between the parties, therefore, the right choice of valuation methods is paramount. This is visible in situation of assessing properties for examples whose comparable transactions are hardly found in the market and are not used for business or revenue generation thus cannot be properly assessed using direct or indirect rental comparison as well as profits/accounts methods but with cost method. Levying property rates is based on the assessed value of property by the valuation officer or his appointed agent (Gilbertson & preston, 2005). These assessed values can be challenged where the property owner feel dissatisfied with the assessed value for fairness and social justice (Goodspeed & Witte, 1999).

Worthy of mention is the fact that the might of the law conferred on local Governments the privileges of levying rates and equally requires them to provide certain services as explicitly stated in the preambles of the legislations. Those responsibilities on the local authority include but not limited to sanitary and solid waste management services, provision and maintenance of city landscaping, streets and drainage cleaning, provision and Maintenance of neighbourhood children play ground/recreation centre, city or town halls, public health and social welfare (Government, 2006). Satisfactory provision of these services enhances the maintenance of environmental heritage as well as environmental aesthetics (Chen 2011). These environmental heritages and aesthetics are treasures worthy of appreciation, requiring sustenance for the benefit of present generation without adversely affecting the interest and chances of future generations to enjoy the benefit of those treasures. Abilities of local authorities to maintain those treasures and aesthetics of the environment depends on their disposable income and this comes from property rates which is the main source of revenue to local authorities in Peninsular Malaysia (Pawi, et al 2011 and Sipan, 2012). This clearly points to the need to streamline property rating related operations in peninsular Malaysia so as to limit confusion/disagreement with a view to enhancing security of income from operation of the tax system.

Section 142 of the Local Government Act 171 of 1976 of Malaysia granted right of objections to rate payers based on certain grievances which includes "over valuation of a rateable property beyond its supposed value, rate charged on a property otherwise prescribed non rateable by the act, omission of a property which ought to be included in the valuation list, under valuation of a property and any valuation or assessment of holding made separately and ought to be made jointly (and vice versa)" (Government, 2006). Rate payers can make a written objection to the local authority at any time but not later than fourteen days before the time fixed for the revision of the valuation list. These objections made should be considered and the objecting party granted fair hearing in person or by any authorized representative (Categories et al., 1995). Therefore, effective performance of the

legislation requires a symbiotic relationship between the key players so that each party is seen as responsible for the discharge of his obligations in order to enjoy the prescribed privileges.

Section 134 of the Act provides for exemption from payment of rates on properties exclusively used as places for public/religious worship, licensed burial grounds or crematoria, public schools, places for charitable, science, literature and fine arts purposes. While Section 135 of the Act provides for either exemption or reduction on any holding which is in part or whole used exclusively for recreational, social or welfare purpose and not for profit purposes at the discretion of the State Government (Government, 2011).

Section 162 of the Act provides that a local authority may order a refund or remission of rates paid during the period of vacancy on any building that remains unoccupied for a period of not less than one month in the assessment year provided (a) there is notice to the local authority within seven days from the commencement of the void (b) that the owner is able to prove that the building is in good state of repair and is fit for occupation (c) a reasonable effort to secure a tenant was made (d) the rent demanded is reasonable (e) the building remained vacant throughout the period claimed. Failure to satisfy any of the condition stated nullifies any claim for exemption or reduction as the act provides.

2 Aim of the study

The aim of the study is to identify common reasons why people object to assessed rate charges with a view to establishing the adequacy or otherwise of service delivery expected from the local authorities based on the reasons advanced by the complainants as well as the efficiency with which objections are handled and discharged. The findings are expected to assist local authorities in enhancing their service delivery status and could serve as a guiding document towards policy enhancement capable of regulating better practice in rating assessment. This will be achieved through analysis of the various positions by the authors as independent and non interested party based on objective assessment of the facts from interviews and observations carried out during objection hearing sessions

3 Method of data collection

Interview sessions were held with the valuation officers of local authorities cutting across the eight local authorities of city hall status throughout Peninsular Malaysia. The choice of valuation officers for the interview was based on a purposive sampling technique due to their established long working experience in the field who would, thus, be the most knowledgeable and could provide a good insight into the subject of investigation. Their primary responsibility included among other things, to represent the unit in the objection hearing in order to advance explanations on the basis of assessment that produced the objected figure of assessed value. The choice of eight local authorities was influenced by the nature of local authority classification in peninsular Malaysia. Those selected are classified as having city hall status and because of the complexity of their localities would provide more information and reasons than the District local authorities. Interviews with the valuation officers were conducted between February 2012 and July 2012. Observation of objection hearing sessions was conducted concurrently in some of the local authorities who had objection hearing session in between the interview periods. Observation sessions took longer than interviews due to the nature of court like manner in handling proceedings thus lasted up to October 2012 with six objection hearing sessions observed in ninety six hours. Documents on previous objections showing the reasons for objections as well as decisions taken on each of the objections were acquired from the local authorities. The documents assisted in preparing a checklist for anticipated basis of objections. Use of previous documents on objections were employed together with observation sessions to serve as triangulation to the facts as they unfolded during the interview sessions. Interviews were recorded and later transcribed before coding. This made categorization of data possible before formulating themes as the tentative outcome of the research.

4 Doctrine of stare decisis

Doctrines are rules and standards which usually shapes the ideological thinking and opinion of the judges based on some strict requirements and procedures that translate into logical conclusion of matters brought before a court (Kozel, 2010). Stare decisis is an Anglo-Latin phrase which literally mean to let the decision stands and encapsulates a duty on judges to respect precedence on decisions taken by higher courts so that settled matters are not disturbed. These precedence are taken as basis or yard stick to measure future cases with similar nature or subject (Serota, 2006). The doctrine of Stare decisis emanated from the English Legal system and was introduced into the Malaysian Legal system as built from the 18th century when the country was part of the British Empire. Malaysia has remained a common law country like the UK and USA though there have been amendments to suites local circumstances which does not affect the doctrine of stare decisis.

The doctrine of stare decisis is two folds; the first fold deals with the aspects of judgments passed by a higher court, such judgments are considered binding on the lower courts, the lower courts need to follow the precedence

and must not make a decision on legal principle contrary to the decision of the higher court. The second fold deals with the aspects of decision taken by the same court or another court of lateral status which simply emphasizes that a court should not overturn its own precedence except where it is extremely necessary. Of course, some courts do but on a rare occasion, this is because there is no rule in Law without exception (Court, 2011). These concepts and principles are found operational in the study area and despite some seeming unfairness observed in the past decisions, the objection hearing committee seems comfortable to follow those decisions on similar cases.

The Supreme Court of California explains the doctrine of stare decisis that all tribunals exercising inferior jurisdictions are required to follow decisions of courts exercising superior jurisdiction (Tiller & Cross, 2006). Otherwise the doctrine of stare decisis makes no sense. The decision of this court are binding upon and must be followed by all the state courts of California. Decision of every division of the district court of appeal are binding upon all the justice and municipal courts and upon superior courts of this state, and this is so whether or not the superior court is acting as a trial or appellate court. Courts exercising inferior jurisdiction must accept the law declared by the court of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court (Kozel, 2010).

The explanation of the doctrine of stare decisis is necessary in this research paper to explain the practice in passing judgement on objection cases by the local authority, this is because all their judgements are based on past decisions taken on similar cases regardless of changing circumstances and the merits of such past decisions hiding under the rule of precedence.

4.1 Methods of Valuation

A number of valuation models are internationally accepted as instrument for determining the value of properties for various purposes. Application of valuation methods depends on the purpose for which the valuation is undertaken as well as the nature of the property, its usage, location and availability of comparable data. Therefore, not every method is appropriate for every property or for every purpose. However, situation may arise to warrant application of more than one method to determine value of property depending on the circumstances surrounding the property in question. Properties or hereditament could be valued for rating purposes using any or a combination of the following methods of valuation (French, 2004).

4.2 Rental Comparison method of valuation

The rental comparison method is most appropriate where there are no adequate suitable and reliable market rental evidence. Given what is sought is rental value, a method which directly uses rental evidence is clearly going to be the most reliable and is therefore the most popular method of valuation. It is widely applied in rating assessment valuation especially for those properties whose comparables in usage are let though they are not necessarily exactly the same in structures, condition or sometimes even location (French, 2004).

Notwithstanding the popularity of the method, It is easier applied when there is enough data on recent rental values of similar or comparable properties within the same or closely similar neighbourhood (Almy, 2002). Such rental values are usually adjusted to cater for the differences between the comparable and subject property and thus the accuracy of assessment depends on skill of the assessor/valuer. Various matters affect the skill and ability to accurately adjust rent: Experience and objectivity of the valuer together with comprehensiveness and quality of the available data (Bello & Bello, 2007 and McCain, et al 2002). Various parameters are relevant including: the physical condition of the properties, age and structural layout of the property, location advantage/weakness, Internal planning, amenity of the premises, property size and accommodation details/characteristics, internal finishing and facilities, functional efficiency and essential services as well as the date of fixing the existing rent (*International Valuation Standard*, 2010).

The need to take into accounts the aforementioned parameters whilst making comparative analysis makes it necessary to reduce both comparables and subject premises to a common standard of comparison that is universally adopted. Often, this is an area either superficial or floor area usually in square meters. It is necessary to determine the rate per square meter from the comparable properties before it is then applied to the area of subject property after making the necessary adjustments (Yau, 2009). There are cases where unit of accommodation of some other standard unit of comparison is used rather than the superficial floor area such as in the case of profit oriented or private hospital or cinema and theatre halls where there are such requisite evidences. Where rental evidence is poor then, the Depreciated Replacement cost method is best used as will be seen later (Wyam, et al 2011). Other special premises such as mining and mineral exploration/extraction sites exists which usually are operated on licenses grants. The rents on these kind of properties are better analyzed on their turnover of how many barrel/tonnes are sold annually (Franzsen, 2002).

4.3 Profit/Account method

The Profit or Accounts method originated from the Ricardo Theory of rent which states that profit is a long determinant of rental value of agricultural land (Ilegbinosa, 2012). But in rating valuation however, it is assumed that the rental bid of a hypothetical tenant is related to the profit earning capacity of the hereditament owned by the hypothetical land lord, thus based on the income and expenditure of a business operated in a property (Jarvis, 2001). It involves the determination of gross receipt from all the sections of the business and then deducting the operational expenses to arrive at the gross profit/divisible balance from which a proportion is taken as the necessary inducement for the likely tenant to operate the property leaving a residual amount available to rent and this represents the rateable value. Where the business operator does not make any profit, it does not necessarily mean that the rating authority should automatically accept no rateable value as there are other business operators who are willing to take over the premises for a certain rent payment which the economist termed as the opportunity cost of using the premises (Jack & Victoria, 2002). The Guideline of the professional institutions and the Rating Valuation Forum 1997 of the United Kingdom clearly took the view that the method can only be applied where there is no direct or reliable market rental evidence on the property but the method is most appropriate where there is location or legal monopoly while the presence of income and expenditure are paramount considerations as well (Brown, 2008). This position is buttressed in the case of *Port of London Authority v. Orsett Union 1920*, Lord Dunedin ruled that,

"... What will the hypothetical tenant give for the subject? If the subject is an ordinary one, similar in character to other subjects which have stood the test of the markets, the inquiry is simple. But when the nature and circumstances of the hereditament in question do not admit such a test, some other way must be found. Now there are several ways of attacking the problem. One way is to consider what profit the hypothetical tenant could make out of the hereditament, not in order to rate that profit, but in order to find out what he was likely to give in order to have the opportunity of making that profit. Another way is to see what it would cost an owner to produce the hereditament in its present form and then to see what a tenant who had not himself the money to be an owner, would give the owner yearly, it being assumed that that sum must bear some relation at ordinary rates of interest to what has been spent. No question of law is necessarily involved in either of these methods" (Sayce & Connellan, 2003).

The method suffers a practical challenge of accessing proper books of account as business operators find it pretty hard to disclose their true and undistorted accounts, although the valuer could make estimate of reasonable income and expenditure to manage such an enterprise by a hypothetical and efficient tenant with a view to arriving at a hypothetical rent payable on the property and thus be used as estimated rateable value (Lorenz & Lu, 2008). It is most preferable however to use comparative analysis where there exists evidences of rent on similar kinds of property. Although the method is mostly applied on properties developed for business operation with the primary aim of making profit yet it was originally and in fact recently applied to public utilities and leisure properties that are not specifically meant to make profit as in the case of *Kingston Union AC v Metropolitan Water Board [1926]* as well as (unsuccessfully) in the cases of *Hoare v National Trust [1998]* and *National Trust v Spratling [1997]* (Sayce & Connellan, 2003). Certain public leisure or recreational properties are operated with the primary objective of making those services available to the less privileged or low income earners even though managed by private enterprises, such properties could be granted some subsidy and differential pricing even when there exist comparable rental evidences (Lichfield & Connellan, 1997).

Successful application of the method will no doubt require the availability of the preceding year accounts of the business operated in the premises and ideally, the accounts for at least three years excluding any income from the investment of accrued profit, then making the necessary adjustments in stock and purchases to arrive at gross profit (Brown, 2008 and Vlassenko, 2001). The total working expenses in the course of operating the business are then deducted from the gross profit to produce the net profit of Divisible Balance. There should be a consideration for tenant share which should consist of interest on the capital invested to run the business, the tenants' remuneration for managing the business and a profit for running the business venture. All those added together are assessed at a percentage of the Gross Profit or Gross Receipts which is deducted from the divisible balance to produce the Residue (Plimmer et al 2002). The Residue is what consists of the Rent to the landlord as well as the rateable value to the rating authority, usually the rates are determined from the residue which is considered as the assessed value of that property (Brown, et al 2008).

4.4 Depreciated Replacement/Contractors approach

The Depreciated Replacement Cost or Contractors approach is another established method of valuation whose application is preferred on such properties that are relatively difficult to value on the comparative method of valuation due to the absence of comparable transaction because they are hardly or never let (Brown & Bond 2011). The method is based on the theory that a tenant will not pay rent in excess of the annual equivalent it will cost him to build his own replica of property that satisfies his functional and occupational demand derivable

from the subject property. Its operation is based on determining the cost of reproducing an exact replica or similar of the subject property in terms of physical, functional and economic satisfaction using a prevailing construction cost and depreciating it to reflect the structural disposition of the subject property at a rate of depreciation considered appropriate to the characteristics and condition of the property in question (Olusegun, 2002). The original name of the method is the contractors basis though the term depreciated replacement cost is often used particularly in non rating context.

It is needful to appreciate that a situation may arise where you have multiple complementary structure or buildings within the same property but of different constructional standards, designs and finishing necessitating an apparent variation in the cost of construction to be adopted in order to arrive at their replacement cost, in such situation the assessor must use high level of experience and discipline due to the complexity and difficulty to assign the appropriate rate of construction cost per square meter on each of the complementary components (Wyatt, 2009). An illustration is a situation for example of a water corporation with multiple storey structure office complex at the frontage, water treatment bays at another part, power house, clinic, security post, restaurant and the rest, this will no doubt require different rates of construction cost for the different components due to their difference in construction standards and material consumption (Emeny et al 1984). Thereafter a value of the land is added which is usually determined through the method of comparative analysis of recent market transactions on land preferably within same vicinity and having similar characteristics. Scholars have opined that no property or land parcels are the same they must differ at least by their situations and nature either on the surface or beneath thus the need to make adjustment on all comparable parcels considered during the analysis (Plimmer et al 2008). It is worthy of note here that the method is only really applicable in the absence of direct market rental evidence and or profit/accounts evidence for properties where there is an element of monopoly in its occupation and occupied for profit when assessing for rating purpose. For depreciated replacement cost, the premises typically are not occupied for profit and have the actual occupier as the only likely occupier as is the case of public properties and private operational properties that seldom change hands such as the oil refineries, power stations and mining co operations (Bird & Slack 2002). All hereditament falling within the afore mentioned circumstance are better assessed using the method in order to determine the capital value of the property from which a proportion or percentage is adopted as rateable value. The basic challenge in the application of this method is the absence of a criteria for determining the percentage of the capital value that could be adopted as a rateable value. In *Cardiff City Council v. Williams (VO) [1973] 18 RRC 1*, Lord Denning, citing the *Solicitor General in Dawkins (VO) v. Royal Leamington Spa Corporation and Warwickshire County Council [1961]*), described the following passage as the 'classic explanation' of the Contractor's Basis: "As I understand it, the argument is that the hypothetical tenant has an alternative to leasing the hereditament and paying rent for it; he can build a precisely similar building himself. He could borrow the money, on which he would have to pay interest; or use his own capital on which he would have to forgo interest to put up a similar building for his owner-occupation rather than rent it, and he will do that rather than pay what he would regard as an excessive rent - that is, a rent which is greater than the interest he forgoes by using his own capital to build the building himself. The argument is that he will therefore be unwilling to pay more as an annual rent for a hereditament than it would cost him in the way of annual interest on the capital sum necessary to build a similar hereditament. On the other hand, if the annual rent demanded is fixed marginally below what it would cost him in the way of annual interest on the capital sum necessary to build a similar hereditament, it will be in his interest to rent the hereditament rather than build it" (Sayce & Connellan, 2003).

Application of the contractors method of valuation in determining annual value or rateable value of a property is further solidified in the case of the East Sussex leisure centre cases in the UK (*Eastbourne BC and Wealden BC v Allen (VO) (2001)*) where the appellants challenged the approach adopted by the valuation office based on submissions from their advisor who applied the shortened profit approach where a 7% of the gross Receipts was adopted to represent the rateable value and further argued that at best could be to use a comparable rental value of similar occupation. The tribunal rejected the adoption of comparable value for the ground of insufficient comparable alternatives and favoured the contractors approach on the premise that; (a) It is a clear method for rating assessment valuation with clear intellectual justification. (b) That it is established for quite a long time and is widely understood by rating and valuation officers. (c) It is equally used by a greater proportion of local authorities especially on properties that has no sufficient rental evidences and for which receipts and expenditure valuations could not be applied. Such properties include among others: schools, sewage works, museums, public halls, fire stations, public conveniences, cemeteries, art galleries, and bus stations/railway stations (Lorenz & Lu, 2008).

Application of the method is sometimes explicitly stated in the statutes to be the basis of valuation for properties whose comparable transaction are hardly ever available. "Assessment in respect of a property occupied by a public utility corporation, other than tenements used as dwellings should be assessed on depreciated replacement cost method which should be reduced to annual equivalent" (Olusegun, 2002). It is worthy of

emphasis that where a contractors method is used, caution must be exerted to include the necessary components as land values, cost of external works (landscaping, fence work, swimming pool, play ground, pavements, road, passages and others), rateable plants and machinery (Plimmer, et al 2010)

5 Procedure involved in objection hearing

The holder of the assessed property who is aggrieved must file a written objection with the local authority stating the property address, the assessed value and the grounds for objections as well as his prayers from the objection.

The objection must be accompanied by evidence of payment at least 50% of the assessed value before it is even accepted at the local authority office in seven out of the eight local authorities. The exception is Petaling jaya where no such payments are required before filing/hearing an application for objection.

Thereafter, the local authority will look at the objection to see whether it falls within the category of the allowed reasons for objections before it is considered for analysis.

The content is analyzed and an invitation letter is sent to the appellant inviting him/her to appear before the objection hearing committee at a certain date, time and venue which is usually in the local authority office. Analysis of applications for objections as contained in section 142 (1) of the act is based on these reasons: (a) holdings valued higher than its rateable value (b) non rateable holding included in the valuation list (c) omission of any holding ought to be included in the valuation list (d) under valuation of any holding below its rateable value (e) separately valued holdings which ought to be valued jointly. However, Section 142 (2) provides that all objections shall be enquired into and the appellant be granted fair hearing either in person or by an authorized agent. This provision has made way for all objections filed to be heard even though some of the local authorities hardly invite appellants whose objection/appeals were on reasons other than those stated in section 142(1), instead the appellant are written back by the local authority expressing their opinion based on the subject of appeal. Response by the local authority is usually guided by past decisions on similar appeal/objection as decided by the objection appeal hearing committee of the local authority, thus complying with the doctrine of stare decisis.

At the appointed time for the hearing, the committee members, who usually consist of counsellors from the local authority, the legal adviser of the local authority, valuation officers, finance officers, service officers from relevant departments proceed to the hearing room and the hearing commences under the chairmanship of a counsellor of the local authority.

The objecting parties are ushered into the hearing room on an individual case basis in a chronological order of appearance on the schedule.

The appellant's name and address are read out to confirm their identity and authenticity before a Power point imagery of the subject property and neighbourhood is displayed for onward explanation to the appellant stating the basis and showing the location of comparable properties used to measure the value of his or her property.

Thereafter the appellant is granted the floor to present his case, he is heard thoroughly without any interruption or intimidation before he or she is discharged.

The committee immediately discuss the merits of the case and decide whether or not to grant part or the whole of the appellant's prayer for onward ratification by the management board of the local authority usually chaired by the president. Such management ratifications are usually done within a period of one month depending on how fast the meeting was convened and the decisions are immediately communicated to the appellant (*Authors extracts from interview, observation and document analysis*)

6 Data presentation

In the table below is the data acquired from the documents triangulated with observation sessions attended during the period of site visits. Reasons found in the table were deduced by authors and extracted from interviews and documents analysis on previous objection/appeal hearing sessions held in the local authorities.

S/N	Reasons for objection	IP	SA	JB	MK	AS	PG	KL	PJ	Remarks
1	Skyrocketed rate increase	16	18	4	12	2	14	12	-	Only one was granted a 10% reduction from Ipoh
2	Higher rates compared to other LGA	2	1	4	-	-	-	4	-	No plea was approved
3	Poor Service delivery	11	7	8	13	12	4	9	2	No plea was granted
4	No services at all to the area	12	-	11	12	7	6	15	3	1 was granted 10% from Ipoh only
5	Partial/Vacant occupation	13	25	3	12	13	3	12	8	No plea was granted
6	Closed/Non operational factory	1	8	5	2	1	3	6	1	No plea was granted
7	Challenging methods of assessment	1	10	-	-	-	5	7	5	1 from Ipoh, 4 from KL and 2 from PJ was referred for re-assessment
8	In ability to pay due poor income	3	-	1	2	3	-	-	-	No plea was granted
	TOTAL	59	69	36	53	38	35	65	19	

Source: Authors construct from Interview, document analysis & observation (2012)

Key: IP= IPOH, SA= SHAH-ALAM, JB= JOHOR BAHRU, MK= MELAKA, AS= ALOR STAR, PG= PENANG, KL= KUALA-LUMPUR and PJ= PETALING-JAYA

7 Discussion of findings

Resistance or reluctance to paying tax is as normal as breathing, everyone is happy to enjoy an array of public services providing comfort which are obviously provided from revenue generated from those taxes including property rates. Properties are assessed using the afore discussed methods of valuation based on which rate liabilities are determined. It was found that aggrieved parties to the assessment objected mostly on the grounds set out in the above table and further discussed below.

There were complaints lodged almost at every hearing session that rates were comparably low and suddenly sky rocketed to an outrageous sum beyond that which the subject could afford. The consequential explanation from the rating authorities were that the characteristics of the property had changed from vacant land to developed property in some cases and in other cases from obsolete building to newly constructed or improved building thus had to be re-assessed to reflect their current status. Most of the appellants pleaded ignorance of the process during the hearing.

The simple fact which can be understood from this situation is that the subjects were not carried along when the processes of status conversion in the valuation list begun. They had not understood their rateable values would need to change and had made assumptions on the wrong basis due to lack of accurate information about the rating valuation process. This lack of understanding had resulted their decisions to object with a view to gaining reduction or relief on an imagined basis which was simply not in line with or allowed under the law in section 134, 135 and 162 of the Act as highlighted by the applicants during the hearing session.

Others were of the thinking that rate charges are fixed forever, this perception could be linked to the fact that most local authorities have fallen short of their responsibilities to reassess all properties after every five years within their rating areas in most local authorities thus creating the notion of fixity in rate charges. Failure of local authorities to carry out re-assessment of all properties is caused by withholding approvals by state governments as required by the law, their refusal is mostly on political ground as highlighted during interviews by all the respondents. This reason is personal and perhaps due to their closed mind on the option that rate percentages could be reduced where there are higher property values results from re-assessment, this could be done without increasing burden on the rate payers and have satisfied requirements of the law as well as building a continuous data for referencing. Another reason associated with the scenario is that, standard practice require percentage rate charges are determined based on the cost of providing public service/expenditure that should be defrayed from rates collected. The contrary is what is obtained as it is the generated revenue that determines what public service/expenditure could be provided.

Comparison was also done with other local authorities by some of the subjects who objected to their rates on the basis of having higher rate charges compared to other local authorities who they regarded as superior in terms of delivery of services, in terms of satisfaction and opportunities for business. This particular reason have actually highlighted deficiency in achieving operational uniformity within peninsular Malaysia. The local authority is obliged to provide certain infrastructural facility and service functions to the citizens through various units,

departments and sections. These services were found inefficient by the rate payers despite their efforts of reporting to the units concerned. Those service issues as noise pollution control from co-occupants operating business within shop-house complexes, poor waste management services, blocked drainages with sediments, roaming domestic animals, offensive odours from dumped garbage and open dumping causing nuisance. The implication here is that people do not have value for payment thus they view it as extortion by the local authority as they pay but are not receiving good services. Although the Act states those services to be the responsibility of local authorities to the public, yet the Act did not recognised failure or inefficiency on those service as a valid reason for objection. By interpretation therefore, the local authorities could not be held accountable for the inefficiency and failure of their service delivery to the public but the public are punished for failure or delayed payments of rates.

Partial occupation of premises was also identified as one of the reasons advanced by the rate payers who objected to the rates; that they were billed on full occupation when some portion of the premises was unoccupied. This arguments seems in line with the provisions of section 162 (1) "where any building is unoccupied and no rent is payable in respect thereof during a period of not less than one calendar month in any half year in respect of which a rate has been paid the local authority may order the refund or remission, as the case may be, of a part of such rate proportionate to the period during which the building has been unoccupied". The valuation officers had during the hearing explained a contrary position that they did not see the property as being vacant at the date of their assessment even though they noticed some nearby shops were closed.

There were also factory operators who filed objection for non operation of the factory over a long period of time but act 171 of 1976 do not in any way address the issue of a closed factory. The argument advanced in the objection was in ability to pay the rate due to non operational status of the factory, the operator further prayed that, since the rating system is based on individual's ability to pay, then his in ability can be justified as his factory is closed for a long time. However, allowing this to continue could be detrimental to economic development for a factory to remain closed for a long time. It should therefore be discourage through such means as taxation as was the decision on the objection. This will serve as deterrent and makes the owner to put extra effort to resume production or lease/sale to willing and able investors so that it can be made beneficial to the economy.

There were objections filed or heard on the methods applied to assess properties within the local authorities' jurisdictions, the researcher identified issues with application of the methods from the interview sessions. The objections concerned established principles and procedure in the methods' application. One issue concerned categorizing an established five star hotel with considerable goodwill and a large customer portfolio as a comparable to a new established five star hotel struggling for awareness and to win customer confidence. This practice has negated the requirement of the profits/accounts method of assessment specifically developed for such properties as hotels in order to achieve fairness. The profits/Accounts method is applied to those income producing properties with relatively large work force and working consumables where similar rented comparables are not easily found such as filing stations, hotels and others (Brown, 2008). The practice in this category in the study area is that, they are graded according to status as hotels are graded into stars as 5star, 4star, 3star, 2star, 1star and others. In this categorization, all those identified under the category will be valued on the same basis regardless of their period of operation, their established goodwill, customer size portfolio, location, wage responsibility and such other factors necessary in arriving at the divisible balance. Consequently, newly established hotels who are struggling to promote their brand and services are bedevilled with high rate charges that could be detrimental to the success of that business.

This is because greater patronage is accorded to familiar names and locations when it comes to issue of hotels especially those within the central business area and tourist locations compared to those in other locations. Thus there is the need to further develop a classification to cater for the new and growing in business for fairness and equality. Moreover, Section 140 of the Act 171 of 1976 states that " in order for the local authority to assess value of holdings liable for rates, it may require the owner or occupier to furnish returns of the area, situation, quality, use and rent thereof and to give all such information as may be necessary for the preparation of valuation list or for the purpose of such valuation". Literally therefore, we can deduce from this statements that detail statements of the operation of the business is required to actually see the financial footing of the operators based on their receipts, expenditure, liabilities and net profit as the method requires which the authority employs in the valuation of such properties. Therefore, basing valuation on comparable operators' assessments who may be doing better than the subject property is grossly unfair and contradicts ability to pay theory which is the operational theory applied in the local authorities.

The basic principle of rental comparison in the valuation of property for rating purposes requires that the property must be assessed "rebus sic stantibus" that is as it is on the day of valuation assessment without taking into account what it was or what it will be. Thus the value is expected to be a true reflection of the market as at the date quoted in the assessment report. Contrary to this principle is what is found from the study area where

properties are valued in 2012 on the basis of comparable property valued in 1982. The time lag between 1982 to date is long enough to ascribe wide differential margin on all the components of property value determinants and therefore expected an upward review. The reason for the practice is the inability to reassess properties on the list prepared since 1982 due to non approval from the state government associated to political reasons and shortage of qualified personnel. The valuation date is therefore very out of date and based on the list of 1982. Worthy of mention here is that; the act actually empowers the state governments to approve/reject submissions from local authorities on property assessment and preparation of new re-assessed valuation lists but not to the extent of satisfying personal interest first before the national interest. Withholding approval for revaluation or reassessment of properties across the local authorities was mostly for fear of losing votes by the politicians who incidentally are the custodian of the law. This is retarding the country's objective of becoming a star rating country in 2020 on rating assessment and as well making the functions of the local authority narrow and unsatisfactory since there are no adequate resources to attend to ever growing needs of the populace as mandated on the local authority (Pawi et al. 2011).

Equally the application of depreciated replacement cost method of valuation requires the use of current cost of construction per m² to assess the cost of constructing a property as at the date of assessment (Emeny et al 1984) but a reverse is the case seen in the study areas where a property is newly constructed, completed and occupied in 2011, yet the property was assessed based on the construction cost obtained in 1982 which is obviously lower than that of 2011. Second part of this method also requires determination of land value which is done through comparison (Bird & Slack, 2002), yet the adopted value of comparable land was from comparable of 1982 which will be lower than 2011 values and thus the subject land for assessment is undervalued.

Presumption of the authorities is on section 137(2) (Government, 2006) which states " The valuation list together with the amendments made under section 144 shall remain enforce until it is superseded by a new valuation list". while section 137(3) (Government, 2006) says " A new valuation list which shall contain the same particulars as in subsection (1) shall be prepared and completed once every five years or within such extended period as the state authority may determine" (Government, 2006).

Literal interpretation of those sections will inform the reader that those in power seek cover from the ambiguity of the actual intent of the law to pursue personal interest in re-election as against national or public interest to which the policy is intended. In addition; even though the policy granted the powers of extending rating period beyond five year, it clearly did not intend an extension in perpetuity as is the case in the study area as there was never a specific official extension from this time to a definite future date, instead each time the local authorities make their proposal, it is returned un approved without stating when it should come up.

8 Recommendation

There is the need to carry the property owners along by proper and careful explanation when the status of their property is changed and needs to be rated higher than they had expected perhaps due to extensions, rebuilding or improvement. A notion of fixity in rate is unfortunately created by in-frequent reassessment of properties contrary to the policy requirements of the actual legislation. Clear understanding is necessary, so that individual spending plans are not distorted by the sudden notice of payment as is the present situation. Tax levies are not intended to make payers worse off after payment, rather to discharge civic obligation in contributing to societal service provision, it is therefore, taking a small proportion of the income generated from rent or ought to be generated where it is owner occupied. The prospects for property rates could therefore be better explored if the political power in the hands of state governments are reduced in such a way that submissions from local authorities genuinely prepared for general revaluations/reassessments in order to enhance public services are never rejected or only for very sound reasons. Such submissions would therefore be reduced to the status of information to the states, to ensure effective coordination as well as checks and balance.

The period stated in the law for revaluation should be religiously adhered to avoid loss of revenue as is currently the case and to some extent dispel the notion of fixity in rate charges with rate payers and achieve compliance with international valuation standards and practice. This is because, rates are charged on the basis of an assessment made long ago that would have been succeeded by four consecutive re-assessments, yet it remained in force.

The system is built on ability to pay principle, this is some worth difficult to ascertain as abilities to pay are relative and thus able could claim inability. It is therefore recommended that the system be modified to adopt the benefit principle as against the ability to pay principle. Because benefit theory is so wide that even when you argue for not enjoying any service, it can be proven that ownership or occupation of the property within the sovereignty of the country and in a bounded locality that is secured and protected is enough benefit worth appreciating and could thus, reduce number of objections on the basis of inability to pay.

Local authorities are expected to provide some services to the residents within their area of jurisdictions as a condition to rates collection and it was found that poor service delivery was one of the major reasons for

objecting rates payments. The policy should therefore devise a means of ascertaining feed back as well as monitoring service provision by various departments/agencies. This will place local authorities ahead of rate payers especially where they compare services with other local authorities. Therefore, service delivery obligations on the local authorities must be discharged with efficiency and professionalism to ensure continued public confidence and allegiance. This can be achieved through policy review to capture the interest of rate-payers as against total protection to local authorities who fall short of their responsibilities as enshrined in the Act, yet insist on rate payments.

Partial or vacant occupation is another issue considered in the act, though not well known among rate payers especially on the procedure, yet genuine cases were presented during some of the hearing sessions and in line with the provisions of the act but were denied on the basis of past decisions taken on similar objection by the committee. It is pertinent to consider cases on their merits regardless of conformity with past decisions as they could be erroneous.

9 Conclusion

The research discovered that most of the complaints by property owners were based on poor service delivery by the local authority. Therefore, the rate payers use that information or situation as a weapon of bargain against the local authority to seek reduction in the rate charge. Even though the Local Authority Act did not expressly state poor or non service delivery as an acceptable reason for objection, it is paramount to state, at this point, that local authorities are also duty bound to provide those services required of them from the Act in order to continue to have public confidence in paying property rates. It is the conclusion of this research to state that; there is the need to review the policy in such a manner that will equally protect the rate payers interest on value for what they have paid. Thus a proportional payment to service delivery be enshrined while adequate feedback mechanism is introduced in addition to close monitoring by the inspectorate division. It is necessary for the local authorities to improve the efficiency been the custodian of rates, otherwise the dream of rate payers for comfort as an exchange for rate payment is left at the mercy of local authority officials who may have been lagging on their responsibilities while too much power of the state government on approval at wish be revisited.

References

- Almy, R. (2002). Property Tax System. *Taxation*, (October), 6–11.
- Bello, M. O., & Bello, V. A. (2007). The Influence of Contemporary Models on Valuation Practice in Nigeria. *Integration The Vlsi Journal*, (May 2007), 1–14.
- Bird, R. M and Slack, E. (2002). Land and property taxation around the world: A review. *journal of property tax assessment and administration*, 7(3), 31–80.
- Brown, B. P., & Bond, P. (2011). *Rating Valuation : Principles and Practice* (Third.). London: Estate Gazette.
- Brown, P. K. (2008). Valuation of leisure property for rating : The receipts and. *Journal of Retail and Leisure Property*, 44(October 2008). doi:10.1057/palgrave.rlp.5100084
- Brown, P. K., Enterprise, P. J., & Street, B. (2008). Receipts and Expenditure Approach. *Journal of Retail and Leisure Property*, 7, 53–67. doi:10.1057/palgrave.rlp.5100084
- Categories, L. G., Functions, L. G., Finances, L. G., Systems, P., Participation, P., & Ahead, T. W. (1995). Country paper : Malaysia. *Public Works*.
- Chen, W. Y. (2011). Value of scenic views : Hedonic assessment of private housing in Hong Kong. *Landscape and Urban Planning*, 91(4), 228–234. doi:10.1016/j.landurbplan.2009.01.009
- Court, U. S. S. (2011). U.S. Supreme Court. *New York*.
- Emeny, Rogers & Wilks, H. (1984). The Principles and Practice of Rating Valuation. *The Estate Gazette*, (4).
- French, N. (2004). The Valuation of Specialised Property : A Review of Valuation Methods. *journal of University of Readings*, 44(0), 1–10.
- Gilbertson, B. & preston, D. (2005). Practice briefing; A vision for valuation. *emerald journal of property valuation*, 23(2).
- Goodspeed, T. J., & Witte, A. D. (1999). International Taxation. *Journal of Wellesley College*, 256–300.
- Government, L. (2006). Local Government Act 1976. *Interpretation: A Journal Of Bible And Theology*, (January).
- Government, L. (2011). Country paper : Malaysia. *Search*.
- Ilegbinosa, A. I. (2012). An Analysis of Karl Marx ' s Theory of Value on the Contemporary Capitalist Economy. *Journal of Economics and Sustainable Development*, 3(5), 1–6.
- International Valuation Standard (2010). IVSC. Retrieved from www.ivsc.com
- Jack, A., & Victoria, D. V. (2002). VALUATION BEST PRACTICE : - BUT WHAT ARE THE BENCHMARKS ? *Assessment* (pp. 1–12). Christchurch: PRRES.
- Jarvis, S. (2001). *Modern Valuation Techniques*. Society. London.

- Kozel, R. J. (2010). *Stare Decisis as Judicial Doctrine* (pp. 411–466). Washington.
- Lichfield, N., & Connellan, O. (1997). Land Value Taxation in Britain for the Benefit of the Community : History , Achievements and Prospects. *Economic Theory*.
- Lorenz, D., & Lu, T. (2008). Sustainability in property valuation : theory and practice. *Journal of Property Investment & Finance*, 26(6), 482–521. doi:10.1108/14635780810908361
- Mccain, B. R. A., Jensen, P., & Meyer, S. (2002). Research on Valuation of Land and Improvements in Philadelphia.
- Olusegun, K. (2002). *Principles and Practice of Property Rating* (second.). Lagos: Tony Terry Prints.
- Pawi, S., Juanil, D. M., Zahari, W., & Yusoff, W. (2011). Property Tax Performance of Local Authorities in Malaysia. *Artificial Intelligence*, 6(1), 42–46.
- Pawi, S., Martin, D., Zahari, W., Yusoff, W., Sipan, I., & Shafie, F. (2011). Transformation of Property Tax Management in Local Authorities (LA) Malaysia Based on Star Rating Concept, 136–141.
- Plimmer, F., McCluskey, W., & Connellan, O. (2002). Valuation banding – an international property tax solution? *Journal of Property Investment & Finance*, 20(1), 68–83. doi:10.1108/14635780210416273
- Plimmer, F., Mccluskey, W. J., & Kingdom, U. (2010). The Basis and Administration of the Property Tax : What can be learned from International Practice ? *TSIF Property Taxation* (pp. 11–16).
- Plimmer, F., Mccluskey, W., & Kingdom, U. (2008). Ad Valorem Property Taxation in the 2004 Accession States in Central and Eastern Europe. *Property Taxation* (pp. 1–15).
- Riel CD Franzsen. (2002). Property Assessment for Rating Purposes in Southern and East Africa : Present Status and Future Prospects. *8th Pacific Rim Real Estate Society* (pp. 1–11). Christchurch.
- Sayce, S., & Connellan, O. (2003). *An Analysis of Rating Valuation Methodology for Non-profit Orientated Leisure Property*. RICS (p. 70). London.
- Serota, M. (2006). Stare Decisis and the Brady Doctrine.
- Sipan, I. (2012). Property Tax Performance of Local Authorities in Malaysia, 8(4), 461–471.
- Tiller, E. H., & Cross, F. B. (2006). What is Legal Doctrine? *Northwestern University Law Review*, 100(1), 517–534.
- Vlassenko, I. (2001). Evaluation of the efficiency and fairness of British, French and Swedish Property tax systems. *Property management journal*, 19(5), 384–416.
- Wyam, D., Seidin, M. & Worzala, E. (2011). A new paradigm for real estate valuation. *Emerald journal of property investment & finance.*, 29(45).
- Wyatt, P. (2009). Replacement cost and market value. *Journal of Property Investment & Finance*, 27(6), 593–602. doi:10.1108/14635780910993186
- Yau, Y. (2009). Evaluating the effects of blacklisting on residential property prices in Hong Kong. *International Journal of Housing*, 2(2), 115–131. doi:10.1108/17538270910963063

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