

LANDS DEPARTMENT (LANDS D)

Case No : OCAC 607/94

Complaint against Lands D - failure to survey the boundary of a missing lot

The Managers of a Tong (the Tong) in the New Territories complained against the District Lands Office (DLO) of Lands D for its failure to survey the boundary of a piece of land (the Lot) for which the Tong had been paying Crown rent but unable to identify its exact location.

2. Investigation by this Office revealed the following -

- (a) The Lot was purchased by the Tong in 1912 and since then it has been paying Crown rent for this lot. However, there was no record, such as a plan or a photograph to set out the exact location of the Lot.
- (b) In 1986, the Tong first applied to the DLO for survey of boundary of the Lot but was informed by the latter that it was a missing lot.
- (c) Upon receipt of the Tong's request, the DLO had taken positive steps to assist the Tong in locating the Lot, including obtaining information of the Lot from the Survey Division of Lands D and the Archivist of the Public Records Office and arranging site visits with the managers of the Tong.
- (d) The available records containing information of the Lot, including those of the Archivist, do not show the location of the Lot.
- (e) In late 1987 and early 1988, the DLO signified both verbally and in writing to the Tong to identify an alternative government land site nearby so that further action could be taken about their request. Subsequently, for reasons unexplained to the Tong, the DLO reversed its earlier decision and required the Tong to first produce evidence to substantiate its claim with regard to the location of the Lot before further action could be taken.
- (f) As the Tong was unable to forward more information to DLO's satisfaction, its request for survey of the boundary of the missing lot was repeatedly rejected.

- (g) According to Lands D's guidelines, Government has an obligation to locate a missing lot where it had accepted continual payment of Crown rent as in the present case, although legal advice was that there was no legal obligation.
- (h) The DLO is currently conducting an extensive survey on relevant resumption files and other records but so far no useful information relating to this case has been unearthed.

3. This Office notes that in this case the DLO had since December 1986 spent considerable time and effort in trying to locate the Lot in consultation with the Tong, albeit these had not been fruitful. On the other hand, the Tong was unable to substantiate its claim with concrete evidence. The case was further complicated by the massive resumption and development in the proximity of the alleged approximate location of the Lot in recent years, making it all the more difficult to pinpoint its exact location.

4. This Office therefore considers that the DLO had taken prompt and thorough actions to assist the Tong in locating the Lot in accordance with the departmental procedures. There is no evidence to suggest that the DLO had ignored the Tong's request. Whether the onus of proving the whereabouts of the missing lot should rest with the alleged owner or the Government under the circumstances should be a legal matter outside the purview of this investigation and it is up to the Tong to consider whether legal advice should be sought.

5. Nevertheless, this Office is of the view that the DLO had in 1987/88 handled the Tong's claim in a perfunctory manner. While it may be prudent for the DLO to seek more evidence before a decision was made to re-establish the Lot by way of surrender and regrant, such requirement and procedure should have been made known to the Tong before the Tong was asked to identify an alternative site. The fact that the DLO had asked the Tong to identify an alternative site undoubtedly gave the latter an impression that Government was then already satisfied that the Tong's claim was substantiated. The reversion of the decision just eight months later without detailed explanation of the procedures involved and the reasons would certainly create mistrust, confusion and a bad impression that the DLO had either made a hasty and flimsy decision in 1988 or had been inconsistent in its approach in handling the same case in a short span of time.

6. The Director of Lands agreed that the whole process in dealing with the Tong's request had not been handled satisfactorily by the DLO. However, he opined that this complaint was that the Lands D failed to survey the boundary of the Tong's land, not that the complainants had been given the false impression that the Tong would be granted an alternative piece of land.

7. This Office is of the view that the incident leading to the complaint must be viewed in its totality. The proposal for identification of an alternative site is part and parcel of the DLO's course of action in response to the Tong's request to survey the boundaries of the Lot. Taking this into consideration, this Office concludes that this complaint is **partially substantiated**.

8. Lastly, this Office has recommended Lands D to review the procedures stipulated in its departmental guidelines on the establishment of missing lots with particular reference to the criteria for determining whether a claim is substantiated or not. This Office is pleased to note that

Lands D has agreed to review the relevant procedures as recommended, which will take about three months to complete.