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THEODORE G. PEARCE and MURIEL ERNESTINE PEARCE

v.

CORPORATION OF THE CITY OF NEW WESTMINSTER

Supreme Court of British Columbia (No. 555/58)

Before: MR. JUSTICE T.W. BROWN

New Westminster, July 28, 1958

D.A. Hogarth for the appellant
H.N. Ledster for the respondent

Reasons for Judgment

This is an appeal brought by way of stated case under the *Assessment Equalization Act*, 1953, and amending Acts, and the case is stated as follows:-

That the said Board heard the appeal of the above-named appellants on the 21st day of April and the 29th day of May, 1958, and rendered its decision on the 30th day of May, 1958. The above-named appellants were dissatisfied with the decision of the Board, and requested that a case be submitted for the decision of this Honourable Court, pursuant to the provisions of the *Assessment Equalization Act*, 1953, and amending Acts.

The facts are as follows:

(1) The appellant is the owner of premises situated at 832 Jackson Crescent, in the City of New Westminster, British Columbia. This property was purchased from the City of New Westminster in the month of October, A.D. 1956, for a price of four thousand eight hundred dollars ($4,800), which price included the cost of underground lighting and telephone, sewer, and gravelled roads. The appellant completed a house on the property in August, 1957, and has lived in the premises since that date.

(2) The appellant erected improvements on the said premises at a contract cost of fifteen thousand six hundred dollars ($15,600).

(3) The appraiser assessed the said land at two thousand one hundred dollars ($2,100) and improvements erected thereon as eight thousand four hundred and fifty dollars ($8,450), these figures being arrived at pursuant to a direction of the Assessment Commissioner of British Columbia, directing the Assessor to assess land at sixty per cent (60%) of the current average market value over the years 1953, 1954, 1955, and 1956, or alternatively, where no average market value over the years in question was available, by taking a percentage of recent sale price of the land in question or adjacent land, where no recent sale price of the land was available. The Assessor assessed the land at forty-five per cent (45%) of the sale price, allowing fifteen per cent (15%) below the sixty per cent (60%) he was directed to assess for prepaid sewer, gravel road, and a difficulty of contractors in obtaining electrical services and telephone lines.

(4) The assessment of eight thousand four hundred and fifty dollars ($8,450) on the improvements erected thereon, was arrived at by using "The Provincial Appraisal Manual" as a guide, and admitted this method of assessing the appellants' premises differed from the method of assessment used in that known as "College Court."

(5) The Assessor admitted that he had guessed at the allowance given to the appellants for the value added to their land by the sewer, underground light and telephone.

(6) The Assessor admitted that he had not subtracted any amount from the assessment of improvements, arrived at by use of the Appraisal Manual, because of the factor of poor roads, though he admitted they affected their value.

(7) The evidence of Mr. Philps, for the respondent, was that his estimate of the value of the appellants' land and improvements was based upon the present value of the appellants' property, when viewed in the light of continued improvement of service.

Wherefore the following questions are humbly submitted for the opinion of this Honourable Court:

"1. Was the Board right in confirming the assessment on land, having regard for 'actual value' as defined in section 328 (1) of the *Municipal Act*, being chapter 42 of the Statutes of British Columbia, 1957, and amendments, and section 37 (1) of the said *Assessment Equalization Act*, 1953?

"2. Was the Board right in confirming the assessment on improvements, having regard for 'actual value' as defined in section 328 (1) of the said *Municipal Act* and section 37 (1) of the said *Assessment Equalization Act*, 1953, when they were assessed by use of the 'Provincial Appraisal Manual'?

"3. Was the Board right in holding that the assessment on the improvements in question could be maintained even though certain other improvements within the City of New Westminster were not assessed by using the 'Provincial Appraisal Manual'?

"4. Was the Board right in holding that the assessment of the lands and improvements in 'College Court' did not, in itself, reflect the general level of assessments in the said City of New Westminster?

"5. Was the Board right in failing to disturb the assessments upon the lands and improvements in question when it found that the assessment upon the lands and improvements known as 'College Court' might well be too low?"

At the outset of argument the appellants claimed that the five questions posed by the learned Chairman of the Assessment Appeal Board were not phrased so as to put clearly in issue matters raised by the appellants in their request to the Board to submit the case for the opinion of this Court. Thereupon the respondent agreed that the five questions in the stated case and the five corresponding suggested questions in the request of the appellants should be read together. Questions 1 and 2 as proposed by the appellants read as follows:-

"1. Did the Board err in holding that the 'actual value' of land mentioned in section 328 (1) of the *Municipal Act*, being chapter 42 of the Statutes of British Columbia, 1957. and amendments, and section 37 (1) of the said *Assessment Equalization Act*, 1953, could be determined by taking a percentage of the current average market value over the years 1953, 1954, 1955, and 1956, or alternatively, when no such average market value over the years in question was available, by taking a percentage of a recent sale price of the land in question or adjacent land when no such recent sale price of land was available.

> "2. Did the Board err in holding that the 'actual value' of improvements mentioned in section 328 (1) of the said *Municipal Act* and section 37 (1) of the said *Assessment Equalization Act*, 1953, could be determined by the sole use of the Assessor's manual without subtracting from such value those factors that the Assessor admitted detracted from the market value of the improvements but had not been deducted from the value derived at by the use of the Assessor's manual. "The differences in Questions 3, 4, and 5 are negligible, and for reasons hereinafter given need not be set out.

I understand from the opening remarks of counsel for the appellants that his case was substantially founded on an alleged failure to equate his clients' lands and improvements with other similar or comparable property in the City of New Westminster, but as the case progressed he took the position that there had not been an assessment at all. My understanding of the reason for this submission was that if his argument were accepted, he would not be faced with the contention of the respondent that some of the questions, probably 3, 4, and 5, did not involve matters of law, and so could not be dealt with by this Court (see *Re Royalite Oil Company Limited* (1957-58) 23 W.W.R. (N.S.) 328. a recent decision of the learned Chief Justice of this Court).

The fundamental basis of assessment is set out in section 37 (1) of the *Assessment Equalization Act*:

> 37. (1) Land and improvements shall be assessed at their actual value. In determining the actual value, the Assessor may give consideration to the present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of such value; and without limiting the application of the foregoing considerations where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.

Section 328 (1) of the *Municipal Act* is to the same effect, with two trifling differences which do not affect the meaning. Subsection (1a) of section 37 of the first-quoted Act reads:-

> (1a) Subsection (1) does not apply to land and improvements in a municipal corporation, the assessed value of which is fixed below its actual value by special Statute of the Legislature.

There is also a reference to a similar difference between actual and assessed value in section 8 (1a), but counsel agreed that there was no such special Statute applying to New Westminster.

In this case, by the application of the formula set out in Question 1, land for which the appellants paid $4,800 in 1956 and 1957 was assessed at $2,100. The improvements, a residence built in 1957 at a cost of $15,600, were assessed in accordance with The Provincial Appraisal Manual at $8,450.

There was no suggestion that actual value was determined under section 37 (1), except as a starting point toward the artificially diminished figure finally arrived at as assessed value. If the Assessor can use 60 per cent, why could he not use 10 per cent? I should think that a known deflationary or inflationary economic condition would be properly considered as a circumstance affecting the value under 37 (1), and that this could be compensated for by the addition to or subtraction from the apparent actual value of a few percentage points, but a constant system of undervaluation to the extent of approximately 40 per cent is obviously arbitrary.

Is there legislative sanction for this practice? The respondent referred me to section 3 (6), section 7 (b), (c), and (d), section 8 (2), and section 9 (2). I can find nothing in any of these which would

have the effect of diluting or abridging the basic rule for assessment as distinctly set out in section 37 (1).

The function of an Assessor is at least quasi judicial. *The King* v. *City of Halifax* (1915) 25 D.L.R. 113, in the partly dissenting judgment of Graham, C.J., at page 115, and in the judgment of Ritchie (who spoke for the majority) at page 125. In *Regina* v. *Penticton Sawmills Limited* (1954) 11 W.W.R. 351, Sloan, C.J.B.C., in upholding an assessment said at page 356:

> If the upset price was a mere arbitrary figure with *no relation* to reality, some criticism might be directed against its use even as a guide, but it is a price arrived at only after a prolonged and careful study of all physical and other factors. It is my view, with deference, that the assessor is within the power conferred upon him by sec. 30 of the said Act when he considers such a price as a guide and indeed an important factor leading to his conclusion of value. [*The italics are mine*.]

The Assessor admittedly acted on a manual, on instructions or directions, and even on a report of a policy statement made by the leader of the Government. If equalization is to be achieved, it is not only desirable but necessary that all Assessors be directed and guided toward uniformity, but if an Assessor is by instructions so far deflected from reality, as is shown to be the case here, then he has not assessed at all, as he has abnegated his judicial function; he has valued on instructions rather than according to law.

But I must answer the first two questions by saying that the Board was right, for by the provisions of section 46:

> 46. (1) The amount of the assessment of real property appealed against may be varied by the Board unless:
>
> (a) The value of the individual parcel under consideration bears a fair and just relation to the value at which other land and improvements are assessed in the municipal corporation or rural area in which it is situate; and
>
> (b) The assessed values of such land and improvements are not in excess of actual value as determined under section 37.

Both (a) and (b) must apply before the Board has jurisdiction to vary the amount of the assessment. It is not necessary to refer to (a), but it is very clear from the stated case that the assessed values as upheld by the Board are not in excess of actual value, so that the Board is prevented by (b) from varying the amount of the assessment.

It is to be noted that (a) and (b) of section 46 (1) deal only with the amount of the assessment. But the branch of the argument before me had nothing to do with mere amounts. It was submitted on behalf of the appellants, with no objection on the part of the respondent that the contention did not arise from the stated case, that there had not in fact been an assessment. I held orally in favour of that view, and that made it unnecessary to deal with the last three questions.

After my finding I asked counsel if they wished to make representations as to the consequences of that decision or agree on an adjustment to the assessment. I was later informed by the learned District Registrar that counsel had agreed that the assessment (which I had held not to exist) was to be treated by consent as varied so to this effect: the land to be reduced from $2,100 to $1,750 and the improvements reduced from $8,450 to $8,000, and it is so ordered.

Costs to the appellants.