CITY OF VANCOUVER

v.

THE CORPORATION OF THE TOWNSHIP OF RICHMOND

British Columbia Court of Appeal

Before: CHIEF JUSTICE A.C. DESBRISAY
MR. JUSTICE J.M. COADY and
MR. JUSTICE F.A. SHEPPARD

Vancouver, October 31, 1958

B.E. Emerson for the City of Vancouver

W.T. Lane for the Corporation of the Township of Richmond

Reasons for Judgment of Mr. Justice Sheppard October 31, 1958.

Per curiam:

This appeal is from a portion of the judgment of Brown, J., increasing the assessment of certain lands from $600 per acre to $700 per acre and thereby varying the judgment of the Assessment Appeal Board and restoring that of the Court of Revision.

These proceedings originally raised other issues, but this appeal was restricted to issues arising out of that assessment.

The lands in question are situated in the Township of Richmond and within the International Airport, which is owned or occupied by the City of Vancouver and consists of approximately 530.74 acres, used for the landing area or reserved for such use in the future. It is on the assessment of this area that this appeal is taken.

In 1958 the Assessor for the Township of Richmond assessed the lands at $700 per acre, and on appeal by the City of Vancouver the Court of Revision confirmed that assessment. On further appeal by the City of Vancouver, the Assessment Appeal Board, by a majority decision, reduced the assessment to $600 per acre for the following reasons:

> However, the Assessor used the amount of $700 per acre for the landing and restricted industrial areas. It appears that he arrived at this figure by a consideration of the assessments of similar adjacent lands. In doing so he took into account a number of rather small parcels which had, because of their size, relatively high assessments. When these were eliminated, we find that the proper figure should be $600 per acre.

The Board, at the request of the Township of Richmond, pursuant to section 51 (1) of the *Assessment Equalization Act*, 1953 (B.C. 1953 (2nd Sess.), chapter 32), submitted a stated case for the opinion of the Supreme Court, which stated case came on for hearing before Brown, J., and that learned Judge reversed the decision of the Board and restored that of the Court of

Revision. The questions in the stated case and the answers of the learned Judge thereto are respectively as follows:-

> "1. Is the decision of the Assessment Appeal Board, with respect to the assessment of the landing and restricted industrial areas of the Vancouver International Airport, correct in principle and consistent with the law concerning valuation of land?" Answer: No.
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> "2. In particular, but without limiting the generality of the foregoing question,
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> "(a) was there any evidence before the Board to support the reduction, from $700 to $600 per acre, made in the evaluation of the landing and restricted industrial areas?" Answer: Not sufficient to bring the case within section 46 (1).
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> "(b) having regard to section 46, subsection (1), of the *Assessment Equalization Act*, 1953, as amended, was there any evidence before the Board to enable it to exercise its jurisdiction to vary the amount of the said evaluation?" Answer: No.

And in his reasons for judgment the learned Judge held:-

> But as I read the stated case of July 4th, the Assessor used the sales and cost approach to arrive at his figure of $700 an acre, and then checked his results by computing the average of the assessments of all parcels physically adjoining the area. He had already established values by methods which I gather were acceptable to the Board; it would appear to me that this final and prudent step, to be usefully accurate, would have to include all adjacent properties. With great respect to the Board I cannot find any more justification for omitting small properties of relatively higher value than there would have been for leaving out some of the larger properties with lower acreage values.

From that portion of the judgment the City of Vancouver has appealed upon the ground that the amount of the assessment was a matter of fact and not a question of law within section 51 (1) of the Act and was therefore outside the jurisdiction of the learned Judge.

That contention that the amount of the assessment was not a question of law but a question of fact turns upon section 37 (1), which reads:

> 37. (1) Land and improvements shall be assessed at their actual value. In determining the actual value, the Assessor may give consideration to 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.

The construction of that section is a matter of law, *Camden (Marquis)* v. *Inland Revenue Commissioners* (1914) 1 K.B. 641, per Cozens-Hardy, M.R., at 647-8, and it would follow that those matters which are determined by giving proper effect to the words in the section, such as the basis of assessment, which is to be "at their actual value," or the items which may be considered in determining that value, are likewise matters of law. On the other hand, although the section permits consideration being given to certain items specifically mentioned and "any other circumstances affecting the value," those "other circumstances affecting the value" are not designated by the Statute and therefore not to be learned by the construction of the Statute, nor can the Court know judicially, as by taking judicial notice, what those circumstances may be. Therefore, the question "What are those circumstances?" cannot be a matter of law, but must be

a question of fact to be determined by the Assessor and others concerned in reviewing the assessment on the facts.

It was contended by the Township of Richmond that there was an error in principle on the part of the Board in taking into consideration the assessed values of some only of the adjoining lands. The Assessor and also the Court of Revision, in order to determine the "actual value," considered some of the enumerated items which were reasonably relevant and also considered the amount of the assessment of certain adjoining lands, whereas the Board excluded the smaller parcels of adjoining lands and took into consideration the larger only. It is not disputed that those adjoining lands, having been assessed "at their actual value," offer some evidence of the "actual value" of the lands in question and therefore were properly considered under the section as "other circumstances affecting the value." The contention of the Township of Richmond is that all such adjoining lands should have been considered, both large and small parcels, and that was the view of the learned Judge. The contention of the City of Vancouver is that it was not obligatory, but discretionary, as to what adjoining lands be taken into consideration.

There appears nothing in section 37 which requires any or all of the adjoining lands to be considered. It is to be observed that section 37 (1) in designating the items which may be considered, uses language that is permissive and not mandatory, and it is therefore open to the Assessor or others concerned in fixing the value, to consider one or all of those designated items, but it is not obligatory to do so. That was stated in *R.* v. *Penticton Sawmills Ltd.* (1954) 11 W.W.R. (N.S.) 351, where Chief Justice Sloan, in construing an equivalent section, said at page 353:

> It seems to me that section 30, in its present form, clothes the Assessor with a very wide and flexible discretion as to the methods he may pursue in his determination of "actual value."

It is therefore discretionary as to whether adjoining lands be considered. Moreover, section 37 (1) does not state what adjoining lands are comparable, so that their assessed value may be considered to be "other circumstances affecting the value of the lands in question," and hence the question of what adjoining lands are comparable, not being ascertainable from the section, is not a matter of principle, but is in each instance primarily a question of fact.

It therefore follows that in the circumstances of this case the "actual value" is a question of fact and not one of law to be determined from the Statute. That conclusion is supported by authority. In *Dreifus* v. *Royds* (1922) 64 S.C.R. 346, the Chief Justice, in construing a comparable section, said at pages 348 and 349:

> I am of the opinion that in a question of this kind as to the "actual value" of lands for purposes of assessment this Court would not and should not interfere with the finding of fact as to such "actual value" if there was any evidence to sustain that finding. The Board is constituted of men of experience on questions of this character. They have the great advantage of visiting and viewing the lands in question, and of seeing and hearing the witnesses who may be called to speak to its value. Unless, therefore, the Board misdirected themselves on the proper principles which should govern them in determining this "actual value," or obviously reached their conclusions as to such value by adopting and following some wrong or improper principle, this Court would not and should not interfere with their findings.

In *Re Coniagas Mines Ltd. and Town of Cobalt* (1910) 20 O.L.R. 322, Moss, C.J.O., at page 325 said:-

> and the question of the value is simply a question of fact. . . .

Further, the "actual value" being here a question of fact is within the jurisdiction of the Assessment Appeal Board under Part VIII of the Statute, but on the other hand is outside the

jurisdiction of the learned Judge of first instance who, acting under a stated case, is by section 51 (1) limited to "a question of law arising in connection with the appeal." Hence the assessment by the Board at $600 per acre not being a question of law was not subject to review by the learned Judge, and that assessment should be taken to stand unvaried.

It was further contended for the Township of Richmond that the Court of Revision in finding the "actual value" had taken as determinative the estimated market value and the original cost of the lands in question and had used the assessed value of the adjoining lands merely as a "check," and therefore the Board was in error in considering the assessed value of the adjoining lands not as a mere check, but as determinative of the value of the lands in question in place of the market value or original cost. These two tribunals, the Court of Revision on the one hand and the Board on the other, have differed over the importance of various parts of the evidence about the value of adjoining lands and hence have differed over the weight of evidence. The weight of evidence is a question of fact and is not a question of law (Phipson, 9th Edition, p. 11), therefore is not within the jurisdiction on stated case under section 51 (1).

It was also contended that the powers of the Board to review were restricted by section 46 (1), which reads as follows:-

> 46. (1) The amount of the assessment of real property appealed against may be varied by the Board, unless:-
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> (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 situated; and
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> (b) The assessed values of such land and improvements are not in excess of actual value as determined under section 37.

Under the finding of the Board the assessment of $700 per acre did not bear "a fair and just relation to the value of other lands," hence clause (a) of 46 (1) could not apply. Also the Board found that the assessed value of $700 was in excess of the "actual value" of the lands in question and hence clause (b) of 46 (1) could not apply.

In conclusion, the appeal should be allowed and the assessment of the Board at $600 per acre should be restored.