CANADIAN PACIFIC RAILWAY COMPANY

v.

THE CORPORATION OF THE DISTRICT OF BURNABY

Supreme Court of British Columbia (No. X580/61)

Before: MR. JUSTICE D.R. VERCHERE

Vancouver, September 27, 1961

F.E. Dent for the Appellant
R.W. Gilchrist for the Respondent

Reasons for Judgment

This is a submission in the form of a case stated by the Assessment Appeal Board for the opinion of this Court on the question of whether the Assessor in valuing the appellant's railway rights-of-way applied the considerations which, by law, he was required to apply.

It appears from the recital of facts in the stated case that the appeal by the Canadian Pacific Railway Company to the Board was concerned only with the assessed value of land comprising two lengths of railway right-of-way situate within the municipality which had been assessed at $128,895 and $19,275 respectively for the year 1961. The Board found as a fact that these assessments were compiled by the Assessor "in accordance with the methods used by this Board in fixing the assessments for the said lands in 1956, the increase in the assessments for 1961 being the direct result of increased assessments upon adjoining lands in the interim."

The evidence indicated that these lands were unchanged since 1956, except for an increase in acreage resulting from a resurvey. The result of the resurvey was admittedly inconsequential as far as the appeal was concerned, the railway contending only:

> (a) That the Assessor was in error in assessing the railway lands in the manner indicated in paragraph 3 hereof. (Quoted in part *supra*.)
>
> (b) That the *Assessment Equalization Act* and Order in Council No. 541 required the Assessor to determine the assessed value in 1961 on the basis of actual value of said lands in 1955.
>
> (c) That the judgments of this Board in 1956 respecting the said lands determined their 1955 actual value.

The Board declined to accept this argument, and upon its appeal being dismissed, the railway required the Board to state a case for the opinion of this Court on the following question: "In assessing the railway lands in the manner indicated by this Board did the Assessor apply the considerations required by section 37 of the *Assessment Equalization Act* and Order in Council passed pursuant thereto?"

Counsel for the respondent agreed that for both general and school purposes the assessment had been made in accordance with section 37 (1), (2), and (3) of the *Assessment Equalization Act* as if a by-law under section 339 (2) of the *Municipal Act* had been passed. It was also agreed that the assessment roll containing this assessment had been authenticated in 1961, and section 37 of the *Assessment Equalization Act* as it existed before amendment in 1961 was therefore applicable here.

It was objected at the outset that the question posed is one of fact and not law, but I think this objection must fail. It was pointed out by Sheppard, J.A., in *Vancouver* v. *Richmond Township* 17 D.L.R. (2nd) 548 at page 550 that the construction of a Statute and therefore matters determined by giving proper effect to its words - e.g., the basis of assessment or the matters to be considered in determining the value assessed-are matters of law, while the question "What are those circumstances?" where the Statute permits consideration of "other circumstances affecting the value" is one of law. This distinction is pointed up, I think, in the examples which appear in the judgment of Lett, C.J., in *Re Royalite Oil Company Limited* 23 W.W.R. (N.S.) 328. In the present case the applicable considerations are those set out in section 37 (1), (2), and (3) of the *Assessment Equalization Act*. The determination of them and, following that, the question whether they were properly applied in making the assessment is thus a question of law.

The task of the Assessor under section 37 (1) is to determine the actual value of the land and improvements, and in so doing he is permitted to give consideration to several factors, including the value of contiguous lands, after full recognition has been given to the factors of enhancement, restricted use, restricted title, and "plottage". See *C.N.R.* v. *Vancouver* (1950) 2 W.W.R. 337 at pages 350 and 351. Then under subsection (2) and Order in Council No. 541, passed March 20, 1959, the Assessor must also determine the 1955 actual value, which must be what the actual value determined under subsection (1) would have been in that year. Subsection (3) and Order in Council No. 541 then provide that the assessed value shall be 60 per cent of the 1955 actual value so found. The difficulty of the Assessor's task has, I suppose, brought about the 1961 amendment to section 37, by which subsections (2) and (3) are deleted and a new subsection (3) enacted, by which assessed value is stated to be 50 per cent of the actual value determined under subsection (1), but, as pointed out, that amendment is not applicable here.

The assessment of the land comprised in the railway's rights-of-way was made by direct transfer to its total acreage of the value of adjoining lands after application to it of a weighted arithmetic mean arrived at by taking into consideration the factors recited above. Mr. Dent contended that it was wrong to make a direct transfer of the value thus ascertained, and that it should instead have been applied by being taken into consideration. In my view, although there is a distinction, there is no difference between the one and the other, because the Assessor took the proper factors into consideration though applying the result directly. This objection must therefore fail.

It was next contended that as the evidence indicated that the Board had itself, by two judgments delivered in April, 1956, determined the value of these right-of-way lands in 1955 and no physical change in them had since taken place and no sales of adjoining lands had taken place, the Assessor should have accepted that valuation in subsequent years, including the present one. In my view this principle, if adopted, would deny to the Assessor the right to take into consideration "other circumstances affecting the value" referred to in section 37 (1), such as population density and altered use of adjoining lands, and it cannot therefore be accepted.

Alternatively, Mr. Dent then said that the increase from year to year of the value of adjoining lands and the direct transfer of that value, although adjusted by application of a weighted arithmetic mean, to the right-of-way land put on the railway the unfair burden of appealing the assessments of adjoining lands to protect itself. The Board considered this point and said: "The obvious answer is that if the appellant is of the opinion that the right-of-way is assessed beyond its proper value, it can produce evidence on its own appeal that the assessment upon adjoining lands is too high." With respect, I agree, and accordingly must reject this contention.

In my opinion, then, the question must be answered in the affirmative, and the respondent's costs and those of the Board, if any, should be paid by the appellant.