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SHELL OIL COMPANY OF CANADA, LIMITED
and
STANDARD OIL COMPANY OF BRITISH COLUMBIA LIMITED

v.

THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER

British Columbia Court of Appeal

Before: MR. JUSTICE H.W. DAVEY
MR. JUSTICE C.W. TYSOE
MR. JUSTICE J.O. WILSON

March 13, 1962

J.S. Maguire for Shell Oil
H.P. Legg for Standard Oil
A.B. Nash for the Respondent

Reasons for Judgment of Mr. Justice Wilson March 13, 1962.

Per curiam:

The appellant, Standard Oil Company of British Columbia Limited, owns three tracts of land in the District of North Vancouver, and the appellant, Shell Oil Company of Canada, Limited, is the lessee of three tracts in the same district municipality. All six tracts are used by the appellants as sites for service-stations for motor-vehicles.

Lands in the municipal district may only be used as service-station sites under two conditions:-

(1) Where a permit allowing such user has been granted by the municipality to the owner or lessee:

(2) Where the lands in question were occupied and used for service-station purposes before the coming into effect of the by-law requiring a permit. In such cases the non-conforming use is legal.

In respect of five tracts, permits have been issued. In respect of the sixth tract, the non-conforming use is legal because it existed before the by-law came into effect.

The learned trial Judge has found, and his finding is not challenged, that the permits for use as service-stations run with the land and would thus pass to a purchaser. It is also undisputed that the right of Standard Oil to non-conforming use of the sixth tract would pass to a purchaser.

These lands were assessed by the district municipality at values which are admittedly higher than the values placed on otherwise comparable commercial premises in the same area, and it is conceded that these higher values were placed on the oil companies' lands because of the

special use which was permitted, which distinguished the lands in question from other commercial properties and, as the Assessor held, gave them a higher value.

The appellants first appealed to the Assessment Equalization Board, which sustained the assessments. At the request of the appellants, the Board stated a case to the Supreme Court, and Munroe, J., found in favour of the respondent, maintaining the assessments. The present appeal is from his judgment.

The questions asked in the stated case were these:-

> "1. Was the Board right in refusing to reduce the assessments herein on the grounds that special value attributed to the lands by the Assessor was not, as claimed by the appellants, value to the owner?
>
> "2. Is the basis upon which the assessments under appeal were determined correct in law in view of the findings of the Board that the Assessor has assessed the service-stations sites' on a special basis which upon the evidence bears no relation to the assessed values on commercial lands in the vicinity of these sites'?"

Both questions were answered in the affirmative by Munroe, J.

I cite some applicable legislation.

Section 37 (1) of the *Assessment Equalization Act* reads as follows:-

> 37. (1) The Assessor shall determine the actual value of land and improvements. 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 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 330 of the *Municipal Act* reads as follows:-

> 330. (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 which such land and improvements might be reasonably 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. 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 46 (1) of the *Assessment Equalization Act* reads as follows (as amended 1961, chapter 3, section 6):-

> 46. (1) The amount of the assessment of real property appealed against may be varied by the Board where, in the opinion of the Board, either
>
> (a) the value at which an individual parcel under consideration is assessed does not bear 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, or

(b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under section 37.

Referring to section 46, which creates the jurisdiction of the Board, it will be noted that the Board may vary an assessment for two different reasons:-

1. Because (under section 46 (1) (a) there is unjust discrimination in that the value assessed does not bear a true and just relation to the value at which other lands in the municipality are assessed.

The words of this section are general and the comparison invited might seem to be between the assessments of all properties in the municipality and the property in question. But this idea will not stand analysis. Obviously a comparison of the assessed value, for instance, of residential property with that of commercial property could be unjust. Residential properties may ordinarily be compared with other residential properties, commercial properties with other commercial properties.

But does this mean, as contended by the appellants, that the comparison of the commercial properties in question with other commercial properties must be made without regard to any special value that may attach to the property which is being assessed. This proposition is not valid. To relate, for instance, the value of a flat, cleared lot with that of a rocky cliffside in the same commercial district would be wrong. Again, if one lot has a beneficial appurtenant easement, giving superior access, it is not to be compared, on a basis of equality, with a property which has no such advantage. The comparisons must be made not generally with all property in the municipality, and not even with all commercial properties, but with properties having the same particular valuable advantage as the property assessed. Any other construction of section 46 (1) (a) leads to an absurdity which the Legislature cannot have intended, a disregard of special values.

The attachment to a commercial site in the municipality of a permit for use as a service-station, or of a legal right to non-conforming use as a service-station, gives to the property assessed a special element of value as tangible and as permanent as would the physical advantage of a waterfront location, or of the appurtenance of a beneficial easement. Therefore, the proper basis of comparison under section 46 (1) (a) of the lots in question is not comparison with all property in the municipality, or with all commercial property in the municipality, but with commercial properties in the municipality enjoying the same advantage as the property assessed, the right to use them for service-stations. The evidence makes it abundantly clear that, on the record of market sales, the properties assessed have, because of the permits, commanded higher prices than have other commercial properties, similarly located, in the municipality. The appellants are, in fact, asking that these properties be valued at less than they paid for them. The proper comparison, I repeat, is with other properties with similar advantages.

2. Leaving section 46 (1) (a) and going to section 46 (1) (b), which must be considered in relation to section 37 (1) of the *Assessment Equalization Act* and section 330 of the *Municipal Act*, I say that nothing in the manner of the assessment offends against those statutory provisions.

It is argued that the valuation involves attributing to the properties value to the owner, a concept which is only valid in expropriation cases-see *Sun Life Assurance Company of Canada* v. *Montreal* (1950) 2 D.L.R. 785. The fallacy in the argument is this-that the special value considered here is not just value to the one owner at the time of assessment, it is a value to any owner at any time.

The owner need not be, as contended by the appellants, an oil company; any person can operate a service-station and buy the necessary oil and fuel from an oil company. The Shell Oil properties are not owned by that company but are leased by it from the owner. Under the terms of the leases Shell Oil pays the taxes. The special values of those properties are, since the permits run with the land, values to the landlord or owner of the land, who can always command a higher

price or a higher rent for his land because of the appurtenance to his property of the permit. Again, if Standard Oil sold their lands, the new owner, to whom the permit would pass, could, on a resale, exact the special value which the permit commands. Any investor, not just an oil company, would deal with these lands, pay for them or sell them, with the assurance that they had a special value, not just to a particular owner, but to any owner. The ownership and operation of service-stations is not restricted to oil companies, and, if it were, this need not be conclusive of the question.

Section 37 says that the Assessor shall determine the actual value and in determining it may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land. . . 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. There is no evidence that the Assessor has strayed beyond these boundaries or beyond the similar conditions set out in section 330 of the *Municipal Act*. It would be utterly unrealistic to value these properties, having special advantages, without having regard to those special advantages, and the recorded prices on market sales abundantly justify the valuations made by the Assessor. To deal with this at any length would involve much repetition of what I have already said in considering section 46 (1) (a). But I must repeat that the special values of these properties, arising from a special and valuable permitted use of the properties, are tangible things, values not just to a present or particular owner, but to any owner, saleable and transferable, as real, permanent, and material as a physical advantage. The Assessor would be doing less than his duty if he did not include them in his computations and did not look at the record of market sales in order to distinguish the values of these properties from those of similar commercial properties lacking the advantages of these valuable permits.

I do not want to slight the authorities cited by the appellants, but I must say that I find in them nothing really helpful to their cause. In *Canadian National Railway Company et al.* v. *Vancouver (City)* (1950) 2 W.W.R. 337, the "value to the owner" concept was very properly rejected, and I have not accepted it here. "Value to the owner," in so far as it has been held in opprobrium, means value to one owner, not just to any owner, and the value here is a value to any owner.

The appeals are dismissed.