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**CORPORATION OF THE DISTRICT OF SURREY**

v.

**C.H. BARNES, ASSESSOR FOR THE CORPORATION OF THE DISTRICT OF SURREY**

Supreme Court of British Columbia (No. X464/62)

Before: MR. JUSTICE F. K. COLLINS

Vancouver, June 8, 1962

A.K. Thompson for the Appellants  
John R. Lakes for the Respondent

**Reasons for Judgment**

The case stated herein was filed on May 28, 1962, and was heard before me on June 8, 1962. It reads as follows:

*To the Honourable the Chief Justice and Puisne Judges of the Supreme Court of British Columbia.*

This case stated by the Assessment Appeal Board aforesaid humbly showeth that the above-mentioned appeal was heard at the Municipal Hall in Cloverdale, in the Municipality of Surrey, on the 16th day of March, 1962, and on the 17th day of May, 1962, in the presence of Mr. A. K. Thompson, of counsel for the appellants, and Mr. John R. Lakes, of counsel for the respondent Assessor.

The facts are as follows:

- (1) On the 17th day of January, 1962, the appellant served notice on the respondent that the Council of The Corporation of the District of Surrey intended to appeal all the assessments against land in the Municipality of Surrey, entered in the roll on the grounds that the assessments had been improperly made, the land had been valued at too high an amount, a portion of the land on the roll had been improperly classified, and such other grounds as its counsel might advise. No notices to the owners of real property were sent pursuant to the provisions of section 352 of the *Municipal Act*, being chapter 255 of the *Revised Statutes of British Columbia, 1960*, and amending Acts by reason of the decision of the appellant.
- (2) At the hearing before the Court of Revision on the 2nd of February, 1962, counsel for the respondent raised preliminary objections to the hearing of the appeal on the ground that the appellant had not complied with certain provisions of the *Assessment Equalization Act* and the *Municipal Act* relating to appeals to the Court of Revision, and the said Court of Revision decided that there was no complaint properly before it. True copies of the notice of appeal to the Court of Revision and the notices of appeal to the Board are filed herewith as part of the case.

(3) On the 16th of March, 1962, the appeal came before the Board, and the counsel for the respondent Assessor raised a series of preliminary objections on each of the three appeals, all pertaining to the question of the jurisdiction of the Board to hear these appeals, and one of the several objections was that the appellant had not deposited the correct sum as required under section 45 (b) of the *Assessment Equalization Act*.

(4) After hearing counsel the Board reserved its decision and then ruled that the objection concerning the deposit, by itself, was a condition precedent and that it had no jurisdiction to hear the appeal. It was accordingly dismissed. The Board held it was unnecessary to determine the other points of law and jurisdiction raised by counsel for the respondent.

(5) On the 22nd day of March, 1962, the appellant served on the Board, the respondent, and the Attorney-General of the Province of British Columbia, a notice of motion for a writ of mandamus to command the Board to show cause why it should not hear an appeal against the assessment roll of The Corporation of the District of Surrey brought by the appellant on the grounds as therein set out, and a true copy of the notice of motion and the supporting affidavit therefor is filed herewith as a part of the case.

(6) On the 29th of March, 1962, the application was heard by the Honourable Mr. Justice Collins in the presence of counsel on the point of whether the Board was correct in refusing to hear the appeal on the ground that the appellant had failed to pay the required deposit. After reserving his decision, the Honourable Mr. Justice Collins ruled that the writ to show cause should issue. The Board did not show cause but directed the appeal to be heard on the 17th day of May, 1962.

(7) At the hearing at Cloverdale, in the said municipality, on the 17th day of May, 1962, counsel for the respondent again raised several questions of law by way of preliminary objections, concerning the validity of the appeal to the Court of Revision, the validity of the three appeals to the Board, and thus the jurisdiction of the Board to hear any of the appeals. After hearing counsel, the Board reserved its decision, and following deliberation decided that the points of law were of sufficient importance since the entire assessment roll was involved, that a case should be forthwith stated to this Honourable Court to determine the several questions hereinafter set forth for the guidance of the Board.

(8) At the hearing on May 17, 1962, counsel for the appellant made application for delivery of particulars of the basis on which the Assessor made up his assessment roll. The correspondence relating to the demand is filed herewith as part of this case. The particulars demanded are in part, at least, the Assessor's evidence. It would require considerable time to prepare since the entire roll of the municipality is involved. The particulars demanded by the appellant related to the basis upon which arithmetic factors were derived and used for general assessment purposes and were generally applied to the various groupings and types of property. The appellant also demanded the precise arithmetic factors used. The demand did not relate to those special factors which might be applicable to individual properties having in themselves special characteristics affecting value.

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

"1. Did the Court of Revision err in deciding not to hear the complaint of the appellant?

"2. Was the Court of Revision right in deciding that an appeal against 'all the land in the municipality' is not an appeal against the assessment roll?

"3. In the circumstances, is there a valid appeal from the Court of Revision to the Board which may properly be heard by the Board (with respect to each and every of the three appeals currently before the Board)?

"4. Was the assessment roll compiled in accordance with the provisions of the *Assessment Equalization Act* and the *Municipal Act*?

"5. Has the Board jurisdiction to hear an appeal upon grounds which were not part of the original grounds of appeal to the Court of Revision?

"6. Has the Board the power to order the Assessor to deliver particulars amounting to his evidence justifying the existing assessment in advance of the hearing for the appellant's purposes, as distinct from the Board's purposes?"

Dated at Vancouver, RC., this 28th day of May, 1962.

K. M. BECKETT,  
*Chairman of the Assessment Appeal Board.*

In these reasons The Corporation of the District of Surrey and the Assessment Appeal Board will be respectively referred to as "Surrey" and "the Board."

Counsel have agreed that the notice of appeal referred to in paragraph number (1) of the case reads as follows:

C. H. Barnes, Esq.,  
Assessor, The Corporation of the District of Surrey,  
P.O. Box 700,  
Cloverdale, B.C.

*Re: All Land Assessments in the Municipality of Surrey*

Dear Sir:

TAKE NOTICE that the Council of The Corporation of the District of Surrey intends to appeal and does hereby appeal all the assessments against land in the Municipality of Surrey entered in the Roll.

The Grounds upon which these appeals are made are:

1. The assessments have been improperly made.
2. The land has been valued at too high an amount.
3. A portion of the land upon the Roll has been improperly classified.
4. Such other grounds as Counsel may advise.

DATED at Cloverdale, British Columbia, this 17th day of Jan., A.D. 1962.

THE COUNCIL OF  
THE CORPORATION OF THE DISTRICT OF SURREY.

A. K. THOMPSON.

*By its Solicitor.*

That notice brought an appeal on behalf of Surrey before the Court of Revision. It will hereinafter be referred to as the primary notice of appeal in order to distinguish it from the three notices of appeal to the Board marked respectively as Exhibits "A," "B," and "C," to the affidavit of Alexander Kenneth Thompson sworn the 22nd day of March, 1962, which forms part of the case as set forth in paragraph number (5) thereof. In order to distinguish each of these three notices of appeal from the others, that one dated February 12, 1962, containing five numbered paragraphs will be referred to as "Notice of Appeal 'A'"; that one of the same date containing three numbered paragraphs will be referred to as "Notice of Appeal 'B'"; the third one, which is dated March 1, 1962, will be referred to as "Notice of Appeal 'C'." This is the same order in which they were marked as exhibits to the affidavit of Mr. Thompson already referred to.

Paragraph number (2) of the case deals with the ground of a preliminary objection raised before the Court of Revision. Counsel have agreed that the "certain provisions" of the *Assessment Equalization Act (supra)* and the *Municipal Act*, being chapter 255, R.S.B.C. 1960, therein referred to relate only to section 352 of the *Municipal Act* and do not refer to any provision of the other named Statutes.

The first two questions submitted by the Board for the opinion of this Honourable Court relate to the appeal of Surrey to the Court of Revision instituted by the primary notice of appeal dated January 17, 1962, which has been reproduced above. The complaint before the Court of Revision was a complaint by the Council of Surrey by its solicitor against the roll. In my view this can properly be regarded as an appeal against the roll as a roll in so far as it relates to land, as provided for in section 351 (2) and (3) of the *Municipal Act*, chapter 255, R.S.B.C. 1960. For that reason it seems clear that by virtue of section 352 (2) the provisions of section 352 (1) do not apply. It therefore follows that the answer to the first question submitted by the Board is in the affirmative and that the answer to the second question similarly submitted is in the negative.

The third question submitted is here reproduced:-

"3. In the circumstances, is there a valid appeal from the Court of Revision to the Board which may properly be heard by the Board (with respect to each and every of the three appeals currently before the Board)?"

Notice of Appeal 'A' is also reproduced:-

C. H. Barnes, Assessor,  
The Corporation of the District of Surrey,  
Box 700,  
Cloverdale, B.C.

Dear Sir:

TAKE NOTICE that the Council of The Corporation of the District of Surrey intends to appeal, and does hereby appeal, to the Assessment Appeal Board from the refusal of the Court of Revision to hear or determine its complaint against the Assessment Roll for the Municipality of Surrey.

The grounds of appeal are as follows:

1. The Court of Revision erred in refusing to hear the complaint of the Council of The Corporation of the District of Surrey, pursuant to Section 351 (2) of the *Municipal Act* of the Province of British Columbia.
2. The Court of Revision erred in holding that the notice of complaint filed by the Council of The Corporation of the District of Surrey was not sufficient and did not comply with the *Municipal Act* of the Province of British Columbia, because the complaint is not required to be in any special form by the said Act.

3. The Court of Revision erred in holding:

" In compliance with Section 354 of the *Municipal Act* please be advised as follows:

The Corporation of The District of Surrey complaint was considered by the Court of Revision on February 2nd, 1962.

The decision of the Court of Revision was as follows:

That the Corporation did not have a proper appeal before the Court under Section 351 (2) and therefore could not be heard."

As set out in the Notice of Decision of the Court of Revision sent by the Assessor, pursuant to Section 354 of the *Municipal Act*, and dated February 5th, 1962.

4. The Assessment Roll of the Municipality of Surrey is not compiled in accordance with the provisions of the *Assessment Equalization Act* of the Province of British Columbia or the *Municipal Act* of the Province of British Columbia.

5. The Assessment Roll of the Municipality of Surrey does not contain the assessed value of land and improvements determined pursuant to the provisions of Section 37 of the *Assessment Equalization Act* of the Province of British Columbia, or pursuant to the provisions of the *Municipal Act* of the Province of British Columbia.

DATED at Cloverdale, B.C., this 12th day of February, A.D. 1962.

The Appellant encloses herewith the \$5.00 appeal fee for deposit with the Clerk.

THE COUNCIL OF  
THE CORPORATION OF THE DISTRICT OF SURREY.

A. K. THOMPSON.

*By its Solicitor.*

It now becomes necessary to consider the preliminary objections referred to in paragraphs numbers (3), (4), and (7) of the case. The objection relating to the deposit to cover the costs of appeal to the Board referred to in said paragraphs (3) and (4) was fully argued before this Court on the motion for a writ of mandamus referred to in paragraphs (5) and (6) of the case. The reasons for judgment handed down April 2, 1962, directing that the writ to show cause should issue stated the grounds upon which that objection was not sustained and do not require repetition here.

Paragraph number (7) of the case states in part that "counsel for the respondent again raised several questions of law by way of preliminary objections, concerning the validity of the appeal to the Court of Revision, the validity of the three appeals to the Board, and thus the jurisdiction of the Board to hear any of the appeals." The case should have set forth each of the several questions of law raised by way of preliminary objection. Normally the case would be remitted to the Board to state clearly and precisely these points of law. The failure of the Board to hear at least one of the appeals in question on March 16, 1962, its failure to hear at least one of such appeals expeditiously after delivery of the reasons for judgment of this Court on the subsequent mandamus application on April 2nd, and the inadequate statement of a case on May 28th which should have been stated, if at all, expeditiously following the abortive hearing before the Board on March 16th of this year, on which occasion all preliminary objections now in question were there raised, have so delayed the final disposition of Surrey's appeals to the Board that time has become extremely pressing to Surrey with respect to matters relating to the assessment roll. In

view of that circumstance and with the concurrence of counsel for Surrey and for the Assessor, it was decided to hear argument on the points of law raised by a statement of the questions submitted.

Section 361 (1) and (3) of the *Municipal Act (supra)* is here reproduced:

361. (1) The Council or any person dissatisfied with the decision of a Court of Revision as constituted under subsection (1) of section 355 or with the omission or refusal of a Court of Revision to hear or determine a complaint may appeal therefrom to the Assessment Appeal Board as constituted under the *Assessment Equalization Act* and in the manner in such Act set out.

(3) The provisions of sections 45 to 48, inclusive, and section 51 of the *Assessment Equalization Act* apply, mutatis mutandis, to an appeal brought under this section.

In my view Notice of Appeal 'A' institutes an appeal to the Board by the Council of Surrey from the omission or refusal of the Court of Revision to hear or determine a complaint made by the primary notice of appeal dated January 17, 1962. It is common ground that Notice of Appeal 'A' was given to the Assessor by the Council of Surrey within the 10 days stipulated by section 45 (a) of the *Assessment Equalization Act*. In Notice of Appeal 'A,' grounds of appeal numbers 1, 2, and 3 are of necessity new and different grounds than those set forth in the primary notice of appeal because they properly refer to three alleged errors of the Court of Revision at its meeting on February 2, 1962, many days after the primary notice of appeal had been filed. In the primary notice of appeal, grounds 1, 2, 3, and 4 are sufficiently wide to cover grounds 4 and 5 as stated in Notice of Appeal 'A,' with the exception of the words "and improvements" contained in ground 5. That portion of said ground 5 consisting of the words "and improvements" can properly be regarded as mere surplusage in considering whether Notice of Appeal 'A' is a valid notice of appeal from the decision of the Court of Revision on the appeal instituted by primary notice of appeal. With respect to Notice of Appeal 'A,' in my view there is a valid appeal from the Court of Revision to the Board. With respect to Notice of Appeal 'A,' the answer to question number 3 is in the affirmative.

The notice of appeal now to be considered is quite independent from the appeal to the Court of Revision instituted by the primary notice of appeal. It is Notice of Appeal 'B,' which is here reproduced.

C.E. Barnes, Assessor,  
The Corporation of the District of Surrey,  
Box 700,  
Cloverdale. B.C.

Dear Sir:

TAKE NOTICE that the Council of The Corporation of the District of Surrey intends to appeal, and does hereby appeal, to the Assessment Appeal Board because it is dissatisfied with the decision of the Court of Revision to confirm the roll with such amendments as were made by the Court of Revision.

The grounds of appeal are as follows:

1. The Assessment Roll of the Municipality of Surrey is not compiled in accordance with the provisions of the *Assessment Equalization Act* of the Province of British Columbia or the *Municipal Act* of the Province of British Columbia.
2. The Assessment Roll of the Municipality of Surrey does not contain the assessed value of land and improvements determined pursuant to the provisions of Section 37 of the

*Assessment Equalization Act* of the Province of British Columbia, or pursuant to the provisions of the *Municipal Act* of the Province of British Columbia.

3. The Assessor did not determine the actual value of the land and improvements in the Municipality of Surrey as is required by the *Assessment Equalization Act* and the *Municipal Act* and from which he determines the assessed value of the land and improvements.

DATED at Cloverdale, B.C., this 12th day of Feb., A.D. 1962.

The Appellant encloses herewith the \$5.00 appeal fee for deposit with the Clerk.

THE COUNCIL OF  
THE CORPORATION OF THE DISTRICT OF SURREY.

A. K. THOMPSON.

*By its Solicitor.*

It will be observed that this is not an appeal from "the omission or refusal of a Court of Revision to hear or determine a complaint" as stated in a portion of section 361 (1) (*supra*). It is authorized by the first portion of said section 361 (1), which reads, "The Council or any person dissatisfied with the decision of a Court of Revision. . . may appeal therefrom to the Assessment Appeal Board. . . ." The appeal instituted by Notice of Appeal 'B' is an appeal by the Council of Surrey from "the decision of the Court of Revision to confirm the roll with such amendments as were made by the Court of Revision." In my view the appeal thereby launched to the Board is a complaint against the roll as a roll. Section 352 (1) (*supra*) has no application to an appeal to the Board, and also by virtue of subsection (2) thereof has no application to it complaint against the roll. , It would also appear, and it is my view, that a like appeal to the Board by Surrey is authorized by section 44 (1) of the *Assessment Equalization Act* by that portion thereof here quoted:

44. (1) Where a person is dissatisfied with the decision of a Court of Revision . . . he may appeal therefrom to the Board.

The definition of the word "person" in section 24 (ff) of the *Interpretation Act* "includes any corporation." and that is sufficiently wide to include a district municipality such as Surrey. Indeed, section 51 (2) of the *Assessment Equalization Act* specifically includes a municipal corporation within the term "person," and the words of limitation there used are used only for the purposes of said subsection (2). With respect to Notice of Appeal 'B,' the answer is in the affirmative.

There now remains for consideration Notice of Appeal 'C.' It was dated March 1, 1962; with this and one further exception it is an exact replica of Notice of Appeal 'B.' Whereas the Notice of Appeal 'B' was expressed to be from "the decision of the Court of Revision to confirm the roll, etc.," Notice of Appeal 'C' was expressed to be from "the decision of the Court of Revision to confirm and authenticate the roll, etc." In my view the time-limit for giving a notice of appeal stipulated in section 45 (a) of the *Assessment Equalization Act* applies only to an appeal to the Board from the decision of a Court of Revision given in respect of an appeal to the Court of Revision and not to an appeal to the Board independent from any former appeal to the Court of Revision. If my view in that respect be erroneous, nevertheless in the particular circumstances of this case Notice of Appeal 'C' must be held not to be out of time for the following reason: the case does not state that the Court of Revision gave notice to Surrey of either the fact or the date of its decision to confirm and authenticate the assessment roll. The inferences to be drawn from the statements made and arguments submitted by counsel for both parties is that no such notice was given. Counsel for Surrey stated that upon request made after February 28, 1962, by Surrey to the Assessor for production for inspection of the assessment roll by its duly authorized representative, the Assessor refused to produce the same, in consequence whereof neither the

roll nor the endorsement of the confirmation and authentication nor the date of such endorsement or confirmation could be ascertained with certainty. In view of these remarkable circumstances and the fact that section 356 (10) of the *Municipal Act (supra)*, requires the Court of Revision to complete and authenticate the roll not later than the 28th day of February following its first day of sitting, it appears proper to draw the inference that Notice of Appeal 'C,' which was given on March 1, 1962, was not given out of time. Notice of Appeal 'C' institutes such an independent appeal. The views already expressed in these reasons with respect to Notice of Appeal 'B' in my opinion apply with equal force to Notice of Appeal 'C.' It therefore follows that with respect thereto the answer to question number 3 is in the affirmative.

Question number 4 of the case is here reproduced:

"4. Was the assessment roll compiled in accordance with the provisions of the *Assessment Equalization Act* and the *Municipal Act*?"

This is the question which the Board will be called upon to answer when at long last it proceeds to hear the appeals it should have proceeded to hear on March 16th of this year. In order to answer that question it will be necessary for the Board to receive and consider evidence. It was entirely premature to include that question in the Case. It should also be noted that the case does not state the facts to which it will be necessary to apply the relevant principles of law in order that this Court might furnish an answer.

In so far as question number 5 has any application to the notices of appeal identified in the case, the question has been sufficiently answered by the several answers given to the different aspects of question number 3.

There remains for consideration question number 6, which is here reproduced:

"6. Has the Board the power to order the Assessor to deliver particulars amounting to his evidence justifying the existing assessment in advance of the hearing for the appellant's purposes, as distinct from the Board's purposes?"

It seems clear from a reading of the *Assessment Equalization Act (supra)* that the Board is a statutory body clothed with the powers bestowed upon it by that Statute and that it has no inherent jurisdiction. I have not been referred to any provision in the Statute or in any regulations made thereunder, nor have I been able to find any which would justify me in coming to the conclusion that the Board has the power to order the Assessor to deliver to Surrey the particulars referred to in question number 6. It follows that the answer to this question is in the negative. It appears proper to state that nothing contained in these reasons can fairly be interpreted as indicating the view that the Assessor was justified in withholding from his employer either an inspection of the roll or reasonably adequate information of the method followed by him and the mathematical factors used by him in making the valuations of land and improvements questioned by the notices of appeal above referred to.

Counsel may speak to the matter of costs.