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CITY OF VANCOUVER

v.

ROBERT J. ROWAN

Supreme Court of B.C. (X552/62)

Before: MR. JUSTICE R.A. WOOTTON

Vancouver, September, 1962

B.E. Emerson and R.H. Stewart for the Appellant

Harry Rankin for the Respondent

Case Stated by Assessment Appeal Board

1. The lands and improvements under appeal are within the City of Vancouver and are owned by the appellant and occupied by him as a single-family residence. The lands are described as Lots 9 and 10, Block 16, District Lot 526, and otherwise as 2661 West 45th Avenue. The lands consist of two lots, one a corner lot, of 51 and 53 feet frontage respectively. They were originally assessed for 1962 at \$6,510. This was reduced to \$6,190 because of the size. The assessment on the improvements for 1962 was \$8,600, which was reduced by the Court of Revision to \$7,350 on the recommendation of the Assessment Commissioner. This assessment as reduced reflected, in the opinion of the Board, a market value of \$27,080.
2. As to the assessment of the lands, evidence was given on behalf of the Assessment Commissioner that their actual value was arrived at by an analysis of five sales of vacant land in the area.
3. As to the assessment of the improvements, evidence was given that because of the excessive size of the site and the fact that the improvement straddled the two lots, it was not possible to find sales of comparable properties in the immediate neighbourhood. Evidence of sales in 1961 of what were alleged to be comparable properties in the area known as Second Shaughnessy was adduced which indicated selling prices ranging from \$24,000 to \$29,000.
4. Evidence was adduced by the appellant that he had purchased his property in June, 1961, in the open market at arm's length for \$25,000.
5. It was the view of the Board that by law the assessment should bear some fair relationship to the market price paid by the appellant.
6. The Board thereupon reduced the assessment on the lands to \$5,860 and on the improvements to \$6,700 and directed that the roll be amended accordingly.

7. The decision of the Board is filed herewith.

8. The transcript of the proceedings and exhibits filed with the Board are also filed herewith.

9. The Assessment Commissioner of the City of Vancouver was dissatisfied with the decision of the Board, and with the consent of the Council has required the Board to submit this case for the opinion of the Supreme Court.

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

"1. Was the Board right in interpreting 'actual value' as 'fair market value' or 'actual cash value' and to base the assessment primarily on the price paid by the present owner some months before the assessment roll closed?

"2. If the answer to Question 1 is in the affirmative, was the Board right in altering the assessment based on that transaction even though the assessment thus determined might not bear a fair and just relation to the assessment of other like properties as alleged by the respondent.

"3. Was the Board correct in holding that market price is the best test of 'actual value' within the meaning of the term 'actual value' in section 37(1) of the *Assessment Equalization Act*?"

Reasons for Judgment

This was a case stated by the Assessment Appeal Board following the hearing of the appeal of the above-named Robert J. Rowan heard by the Board at the City of Vancouver on the 22nd day of March, 1962. The facts as set forth in the stated case are as follows:-

1. The lands and improvements under appeal are within the City of Vancouver and are owned by the appellant and occupied by him as a single-family residence. The lands are described as Lots 9 and 10, Block 16, District Lot 526, and otherwise as 2661 West 45th Avenue. The lands consist of two lots, one a corner lot, of 51 and 53 feet frontage respectively. They were originally assessed for 1962 at \$6,510. This was reduced to \$6,190 because of the size. The assessment on the improvements for 1962 was \$8,600, which was reduced by the Court of Revision to \$7,350 on the recommendation of the Assessment Commissioner. This assessment as reduced reflected, in the opinion of the Board, a market value of \$27,080.
2. As to the assessment of the lands, evidence was given on behalf of the Assessment Commissioner that their actual value was arrived at by an analysis of five sales of vacant land in the area.
3. As to the assessment of the improvements, evidence was given that because of the excessive size of the site and the fact that the improvement straddled the two lots, it was not possible to find sales of comparable properties in the immediate neighbourhood. Evidence of sales in 1961 of what were alleged to be comparable properties in the area known as Second Shaughnessy was adduced which indicated selling prices ranging from \$24,000 to \$29,000.
4. Evidence was adduced by the appellant that he had purchased his property in June, 1961, in the open market at arm's length for \$25,000.
5. It was the view of the Board that by law the assessment should bear some fair relationship to the market price paid by the appellant.

6. The Board thereupon reduced the assessment on the lands to \$5,860 and on the improvements to \$6,700 and directed that the roll be amended accordingly.

The questions raised in the stated case for the opinion of this Honourable Court are:-

"1. Was the Board right in interpreting 'actual value' as 'fair market value' or 'actual cash value' and to base the assessment primarily on the price paid by the present owner some months before the assessment roll closed?

"2. If the answer to Question 1 is in the affirmative, was the Board right in altering the assessment based on that transaction even though the assessment thus determined might not bear a fair and just relation to the assessment of other like properties as alleged by the Respondent?

"3. Was the Board correct in holding that market price is the best test of 'actual value' within the meaning of the term 'actual value' in section 37(1) of the *Assessment Equalization Act*?"

About Question 1, there was very little argument before me. In my opinion the three terms "actual value," "fair market value," and "actual cash value" are synonymous terms meaning relatively the same thing. As to the latter part of the question - that is to say, the basing of the assessment primarily on the price paid by the present owner of the real property some months before the assessment roll closed - the answer to that will be found in the answers to the following questions 2 and 3.

Question 2. In the light of the intention of the *Assessment Equalization Act*, I am of the opinion that the Board was not right in altering the assessment if its decision was based on the one transaction unless its reassessment thus determined did bear a fair and just relation to the assessment of other like properties and was not in excess of the actual value (section 46 of the Act). The comparison of other like properties with the specific property assessed was one for the Board to make before determining their reassessment.

Question 3. The Board is not correct in holding that a recent actual market price is the best test of actual value within the meaning of the term "actual value" as defined in section 37 of the *Assessment Equalization Act*. My reason for so holding is that the whole evidence surrounding the transaction, the condition of the market, and other factors would have to be weighed carefully by the Board before arriving at its decision on the actual value in addition to the factors appearing in section 37(1). Here the price paid appears to have been taken as conclusive of "actual value," and this is not correct.

There will be no costs as the city has asked for none.