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CORPORATION OF THE DISTRICT OF WEST VANCOUVER

v.

PARK ROYAL SHOPPING CENTRE 1956 LIMITED
PARK ROYAL SHOPPING CENTRE LIMITED

Supreme Court of B.C. (X666/62)

Before: MR JUSTICE T.W. BROWN

Vancouver, September 25, 1962

H.J. Sedgwick for the appellant
A.W. Fisher and D.S.D. Hossie for the respondents

Case Stated by Assessment Appeal Board

1. Involved in this appeal are the 1962 assessments both of the lands and improvements with respect to Parcel D, District Lots 1040 and 1041, Group 1, New Westminster District, Plan 10677, and the land only in respect of that parcel known as Parcel I.R. No. 5, Block 3 (4.4 acres), Group 1, New Westminster District, Plan 10731, being situate in the Municipality of West Vancouver, in the Province of British Columbia. The assessment for the said Parcel D, District Lots 1040 and 1041, Group 1, New Westminster District, Plan 10677, was $410,600 for land and $1,000,070 for improvements. The assessment for I.R. No. 5, Block 3 (4.4 acres), being for the lands, $119,245 (as reduced by the Court of Revision).

2. The said lands total 17.034 acres and consist of a shopping centre with buildings thereon, with parking and service areas, and include a new Woodward Stores Limited food store erected in 1961 with parking and service areas provided therefor by the said lands described as I.R. No. 5, Block 3 (4.4 acres), Group 1, New Westminster District, Plan 10731.

3. All of the said lands, with the exception of 1.5 acres, were assessed for the year 1962 at $32,500 per acre, the said 1.5 acres being assessed at $16,665 per acre on the basis that the said lands are used as an approach ramp for an overhead bridge across Marine Drive.

4. The said lands, being I.R. No. 5, Block 3 (4.4 acres), Group 1, New Westminster District, Plan 10731, and following public tender, were leased as part of a block of land being 41.68 acres, of which 37.28 acres are to the south of Marine Drive, West Vancouver, and are leased by Park Royal Shopping Centre Limited from the Department of Citizenship and Immigration on an 80-year lease basis at an average of $2,005 per acre annually for the first 20 years, and subject to the rent being renegotiated every 20 years as provided in section 18 of the *Exchequer Act*.

5. The aforesaid lands to the south of Marine Drive, West Vancouver, were leased for $2,005 average per acre, and were uncleared and raw lands when leased, and upon which a new shopping centre was in the process of construction at the time of assessment and scheduled to be completed by approximately October, 1962.

6. In connection with the development of part of the said lands leased from the said Indian Department, part of these lands, south of Marine Drive, were subleased, and no evidence was submitted as to the amount of the sub-rentals.

7. The estimated economic revenue of 1962, according to Mr. E.W. Palmer, an expert witness for the municipality, showed an effective total economic revenue of $529,134.99, including the projection for 12 months of rental revenue from the new Woodward's food store which had been operating for the last five months of 1961. The net income represents a return of 10.93 per cent of the investment of Park Royal Shopping Centre Limited in the lands and improvements in question before depreciation, and 8.99 per cent after depreciation. The evidence of Mr. D.C. McPherson, an expert witness for the appellants in this connection, was that the projected estimated net income for the year 1962 was $308,853.11, which represented 9.27 per cent before depreciation and 8.85 per cent after depreciation. For the years 1959, 1960, and 1961 the respective percentages were as follows, according to Mr. D.C. McPherson: 9.79 per cent and 8.04 per cent for 1959, 9.11 per cent and 7.35 per cent for 1960, 8.53 per cent and 6.89 per cent for 1961. The national average net return for the United States with respect to the investment in shopping centres is between 8 and 8 ½ per cent, and the national average indicates taxes representing between 11 and 14 per cent of gross income. With respect to the subject lands the present taxes represent 11.82 per cent of the gross income as determined by Mr. E.W. Palmer.

8. The subject property is the only shopping centre of its kind within the confines of the North Shore area, being the Municipality of West Vancouver, the Municipality of North Vancouver, and the City of North Vancouver, and the said shopping centre is a successful operation: $298,572, being 72 per cent of the gross rental revenue of $411,305.38 in 1961, was derived from highly rated tenants (Triple "A") – namely, Woodwards Stores Limited, Standard Oil Company, Royal Bank of Canada, and Woolworth's Limited. These tenants provided firm or guaranteed minimum rental revenue of $129,500.

9. Assessments of other business lands in the municipality included the White Spot property, 1.4 acres, assessed at $69,890, or $1.15 per square foot (corner of Taylor Way and Marine Drive); Rogers Motors property, $44,720, or $1.49 per square toot (corner of Marine Drive and Taylor Way); new Safeway food store premises at $1.84 per square foot (between 16th and 17th on Marine Drive); the whole block across from the said Safeway Stores at $2.11 per square foot.

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

"1. Did the Assessment Appeal Board properly determine the actual value of the lands and improvements under appeal to the Board in accordance with the *Assessment Equalization Act*, Section 37, subsection (1)?

"2. Was the Board right in law in having found that the most cogent evidence before the Board was the rental value being paid by the appellants to the Crown for I.R. No. 5, Block 3 (4.4 acres), Group 1, New Westminster District, Plan 10731, and the large parcel of lands to the south of Marine Drive, leased by the appellants at an annual rental of $2,005

per acre, in applying and using such rental evidence as a major factor in determining the assessment?

"3. Was the Assessment Appeal Board wrong in law in holding that the said leased lands to the south of Marine Drive were comparable, and in using the assessment of such lands as a factor in determining the value for assessment purposes?

"4. Was the Board right in law in finding that land and improvements which are the property of a going concern should be assessed on the same basis as comparable land and improvements but in an unfinished condition (subject to adjustment for other factors affecting the value)?

"5. Was the Assessment Appeal Board wrong in law in holding that monopoly value is not an assessable value, and that the successful business operations of particular lessees, a number of whom are classified as Triple "A," National Covenants, should not be a factor taken into account by the Board?

"6. Was the Assessment Appeal Board wrong in law in holding that no evidence was presented to establish that other assessments of nearby lands were valid for the purposes of valuation and in not holding as a matter of law that such assessments were valid until proven otherwise?

"7. Was the Board wrong in law in not using income or revenue derived by and from the subject lands and improvements as the major factor in arriving at the assessed value.

"8. Is the assessment as determined by the Board contrary to the provisions of section 46 of the *Assessment Equalization Act* and amending Acts?

Reasons for Judgment

The respondent taxpayers raise the preliminary objection that the questions in the case stated at the instance of the Assessor are all questions of fact, and so not subject to be adjudicated upon by this Court.

There are eight questions. Nos. 1 and 8 are very general in their terms, and I should hold them to be in order as a sort of skeletal basis of appeal to be fleshed out by the specific questions, if the other questions, 2 to 7, inclusive, did in fact consist of matters of law. It is also to be noted that Nos. 1 and 8 do not suggest that any particular law has been ignored or misinterpreted.

Questions 3, 4, 5, and 7, although set out as questions of law, have to do with the technique used by the Assessment Appeal Board in making its assessment. Having regard to the wide and flexible discretion of that Board under the Act, I should say without hesitation that these have to do with questions of fact as defined in the unanimous judgment of the Court of Appeal of this Province in *Vancouver* v. *Richmond* (1959) 17 D.L.R. (2) 548. I have had the opportunity of looking at the transcript of the proceedings before the Board, and it appears to me that if I dealt with those questions, 3, 4, 5, and 7, as set out, I should be transgressing the rule set out by Mr. Justice Sheppard for the Court in that decision.

Question 6 gives me a little more difficulty, but I agree with Mr. Fisher's contention that the question is primarily of fact, and, in addition, that it seizes upon the word "valid" not entirely in its context. I should not consider myself quite justified in treating this as a matter of law.

It ought to be made clear that if it were contended on the part of the appellant that there was no evidence on which the Board's findings could be based, the matter would then, of course, be one of law, but nothing in Mr. Sedgwick's answer to the preliminary objection went that far.

I have re-read the judgment of my brother Sullivan, J., in *Re B.C. Forest Products Ltd.* (1961-62) 36 W.W.R., 145. In that case he reserved on a preliminary objection similar to that before me, and then found on going into the facts that there were only matters of law in question. The difference between that case and this, and between that and the *Richmond* v. *Vancouver case (supra)*, seems to me to be that such points of law were almost inherent there in the questions posed.

The preliminary objection succeeds, and the appeal is dismissed with costs.