CANADIAN PACIFIC RAILWAY COMPANY

v.

CITY OF VANCOUVER

British Columbia Court of Appeal

Before: MR. JUSTICE H.I. BIRD, MR. JUSTICE H.W. DAVEY, and MR. JUSTICE F.A. SHEPPARD

Vancouver, March 16, 1964

F.E. Dent for the appellant
R.K. Baker for the Respondent

Per curiam:

This appeal is by the Canadian Pacific Railway Company from the judgment of Collins, J., dismissing that company's appeal by way of stated case from a judgment of the Assessment Appeal Board pursuant to section 51 of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960.

The issues arise out of the assessment for 1963 of two parcels of land in the City of Vancouver known as "Old Shaughnessy Golf Course" and "Langara Golf Course," of which the Canadian Pacific Railway Company is the registered owner. In 1963 those parcels were assessed by the Assessment Commissioner for the City of Vancouver. The Canadian Pacific Railway Company appealed to the Court of Revision, and the Court of Revision reduced the assessment. The city then appealed from the decision of the Court of Revision to the Assessment Appeal Board pursuant to section 44 of the *Assessment Equalization Act*. On the hearing before the Board the Canadian Pacific Railway Company took the preliminary objection that the City of Vancouver had no right of appeal to that Board. The city then introduced evidence of the values and assessed values of lands here in question and of other lands.

On the 22nd of June, 1963, the Assessment Appeal Board delivered judgment allowing the city's appeal and restoring the original assessments. Pursuant to section 51 of the *Assessment Equalization Act*, the Canadian Pacific Railway Company obtained a case stated by the Assessment Appeal Board for the opinion of the Supreme Court of British Columbia on the following questions of law, namely:

> "1. Has the City of Vancouver power to appeal from the Court of Revision to this Board?
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> "2. Was there any evidence before this Board of 'the value at which other land is assessed' with respect to (a) Old Shaughnessy and (b) Langara, within the meaning of section 46 (1) (a) of the *Assessment Equalization Act*?
>
> "3. If the answer to Question 2 is negative, was this Board correct in law in varying the assessment determined by the Court of Revision without such evidence?"

The appeal by stated case came on for hearing before Collins, J., in Chambers, who delivered judgment answering Questions 1 and 2 in the affirmative, and in view of the answer to Question 2 made no answer to Question 3. The Canadian Pacific Railway Company thereupon appealed from the decision of the learned Chambers Judge on two grounds:

> (1) That the City of Vancouver had no right of appeal from the Court of Revision to the Assessment Appeal Board.
>
> (2) That there is no evidence to bring the case within section 46 (1)-the jurisdictional section of the Board.

As to Ground (1), whether or not the city has the right of appeal from the Court of Revision to the Assessment Appeal Board, depends upon the meaning of section 44 of the *Assessment Equalization Act*, which reads as follows:

> 44. (1) Where a person is dissatisfied with the decision of a Court of Revision, or with the omission or refusal of the Court to hear or determine the complaint on the completed assessment roll, he may appeal therefrom to the Board.
>
> (2) The Assessor of the municipal corporation or the Provincial Assessor. when notifying each complainant of the decision of the Court of Revision in his complaint, shall also notify him that he may appeal the decision to the Board and the procedure to be followed by the complainant if he wishes to appeal.

The right of appeal is a statutory right, and therefore must have been conferred upon the city by Statute: *Attorney-General* v. *Sillem* (1864) 10 H.L. Cas. 704; *The Corporation of the City of Windsor* v. *Hiram Walker-Gooderham and Worts Ltd. et al.* (1949) S.C.R. 215, per Kellock, J., at page 229, and that depends upon the meaning of "person" in section 44. The city contends that the City of Vancouver is a person, therefore the right is conferred by that section; on the other hand, the Canadian Pacific Railway Company contends that the person referred to in section 44 does not include the City of Vancouver.

Section 51 (2) of the *Assessment Equalization Act* reads in part:

> (2) Any person affected by the decision of the Board on appeal, including a municipal corporation acting on the recommendation of the Assessor and on the resolution of Its Council, . . .

By implication the words "including a municipal corporation" were inserted for the purpose of enlarging the phrase "any person," and except for such enlargement the phrase "any person" would not have included a "municipal corporation" such as the City of Vancouver. To construe "person" in section 44 (1) and section 51 (2) as including a municipal corporation would make the enlarging words of section 51 (2) "including a municipal corporation," etc., to be mere surplusage, and that is not an intention to be presumed on the part of the Legislature.

There is a further reason for implying a restricted meaning to "person" in section 44 (1). In 1958 section 51 (2) (*Assessment Equalization Act*) was amended by repeal and substitution so as to provide for a Provincial Assessor and the Commissioner having an appeal by stated case. In effect the new section added the words "including a Provincial Assessor acting with the consent of the Minister of Finance, and including the Commissioner." That amendment was presumably required by reason that the Province was not considered "any person affected," and therefore without the amendment had no such right of appeal. In section 44 (2) of the *Assessment Equalization Act* the Assessor of the municipality is required to notify each complainant of the decision of the Court of Revision of the right to appeal and of the procedure thereof. That again implies that the complainant appealing to the Board would be someone other than a municipality as there would be no need for a Statute requiring the Assessor to provide his employer, the

municipality, with that information which the Assessor had obtained by virtue of his office. Section 44 (2) therefore implies that the complainant, having a right of appeal, would be someone other than the municipality. It therefore follows that the word "person" where it appears in section 44 (1) of the same Statute would receive the same meaning as the word has in sections 44 (2) and 51, and therefore without additional words would not include a "municipal corporation."

The restricted meaning of the word "person" in section 44 (1) may be seen from the amendment to Statutes effected by the passing of the *Assessment Equalization Act*. The *Assessment Equalization Act* enacted in 1953 (B.C. 1953 (2nd Sess.), chapter 32) provides for an appeal from assessments to a Court of Revision having the powers vested in Courts of Revision by the *Municipal Act*, the *Taxation Act*, or the *Vancouver Charter* (Part VI, section 15 (1), and for an appeal by a person dissatisfied from the Court of Revision to the Assessment Appeal Board (Part XI, section 44 (1). Hence the *Assessment Equalization Act* sets up the Court of Revision and the Assessment Appeal Board as the successive appeal tribunals for assessment appeals under three Statutes-namely, the *Taxation Act*, R.S.B.C. 1960, chapter 376, formerly R.S.B.C. 1948, chapter 332, which provides for the taxation of lands and improvements outside a municipality and outside the City of Vancouver (1960, chapter 376, section 24); the *Municipal Act*, R.S.B.C. 1960, chapter 255, formerly R.S.B.C. 1948. chapter 232, which provides for the powers generally, including the power of taxation of municipalities; and the *Vancouver Charter*, B.C. 1953, chapter 55, and amendments, which provides for the powers, including the taxation of the City of Vancouver. These three Statutes, or their predecessors, were in force at the passing of the *Assessment Equalization Act* in 1953 (B.C. 1953 (2nd Sess.), chapter 32). After the *Assessment Equalization Act* came into force, then the *Municipal Act* and the *Taxation Act* were amended to provide expressly for an appeal from the Court of Revision to the Assessment Appeal Board set up under the *Assessment Equalization Act*. Those amendments were presumably required only by reason that section 44 of the *Assessment Equalization Act* did not give a right of appeal to the Province in respect of assessment under the *Taxation Act* or to a municipality in respect of assessment under the *Municipal Act*. The earlier *Taxation Act* (R.S.B.C. 1948, chapter 332, section 104) gave a right of appeal from the Court of Revision to a Judge of the Supreme Court or to the County Court "if any person is dissatisfied." In 1955 the *Taxation Act* was amended (B.C. 1955, chapter 80, section 8) by repealing section 104 (R.S.B.C. 1948, chapter 332) and substituting a new section which provides for the right of appeal under the *Assessment Equalization Act* by the assessed owner or by the Assessor. Subsections (1), (2), (3), and (6) of the new section 104 read as follows:

> 104. (1) In this section, "Board" means the Assessment Appeal Board established under the "*Assessment Equalization Act*, 1953."
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> (2) Where an assessed owner is dissatisfied with the decision of a Court of Revision, he may appeal therefrom to the Board.
>
> (3) Where an Assessor is dissatisfied with the decision of a Court of Revision, he may, with the consent of the Minister, appeal therefrom to the Board.
>
> (6) The provisions of sections 45 to 48, inclusive, of the "*Assessment Equalization Act*, 1953," shall apply mutatis mutandis to an appeal brought under this section.

In 1958 the new section 104 was amended to state that the Court of Revision referred to was that "constituted under the '*Assessment Equalization Act*, 1953' . . ."

In 1957 the *Municipal Act* was consolidated (B.C. 1957, chapter 42) and section 358, then enacted, expressly provides for a right of appeal from the Court of Revision to the Assessment Appeal Board by "the Council or any person dissatisfied with the decision of the Court of Revision." Subsections (1), (2), and (5) of section 358 (B.C. 1957, chapter 42) read:

> 358. (1) The Council or any person dissatisfied with the decision of the Court of Revision as constituted under subsection (1) of section 352 may appeal therefrom to the Assessment Appeal Board as constituted pursuant to the provisions of the "*Assessment Equalization Act*, 1953," and in the manner in such Act set out.
>
> (2) An Assessor may not appeal under subsection (1) except with consent of the Council.
>
> (5) The provisions of sections 45 to 48, inclusive, and section 51 of the "*Assessment Equalization Act*, 1953," apply, mutatis mutandis, to an appeal brought under this section.

The Legislature has therefore expressly provided for the municipality having a right of appeal from the Court of Revision to the Assessment Appeal Board, and that would imply that a municipality in the *Municipal Act* was not "a person" within section 44 (1) of the *Assessment Equalization Act*, otherwise this express revision was unnecessary.

On the other hand, the *Vancouver Charter* was not amended to enlarge the rights of appeal under section 44 (1) of the *Assessment Equalization Act* by conferring a right of appeal on the City of Vancouver. By reason thereof, counsel for the city was compelled to argue that "person" where it appeared in section 44 (1) of the *Assessment Equalization Act* should be understood as defined by the *Interpretation Act*, R.S.B.C. 1960, chapter 199, section 24 (ff), (g), and (cc), and therefore would include a municipality. The meaning assigned by section 24 of the *Interpretation Act* would not apply where a contrary intention is shown. In the *Assessment Equalization Act* and also in the associated Statutes, the *Taxation Act* and the *Municipal Act*, the intention is manifest that the words in section 44 (1) of the *Assessment Equalization Act*-namely, "where a person is dissatisfied"-are given a restricted meaning so as not to include a municipal corporation. Such restricted meaning is indicated in section 51 (2) of the *Assessment Equalization Act* and the amendments thereto, and is further indicated by the subsequent amendments to the *Taxation Act* and to the *Municipal Act*, which amendments are unnecessary if "person" in section 44 (1) includes the Province or a municipality.

Counsel for the City of Vancouver also contends that section 45 (1) of the *Assessment Equalization Act* provides for the Assessor of a municipal corporation posting in his office a list containing the names of the parties, and the dates of hearing, and such provision implies that the municipal corporation has received the information either as appellant or respondent, and being appellant has the right of appeal. On the other hand, as the posting by the Assessor is to notify the appellant and respondent, the posting of such notice in a municipal office would be a strange way for the Assessor to notify his municipality as appellant of the date of the hearing of the appeal. Further, this section refers to "appellants" and "parties appealed against" as persons distinct and separate from the Assessor of a municipal corporation and impliedly as distinct and separate from the municipality.

As to Ground (2), counsel for the Canadian Pacific Railway Company contended that the jurisdiction of the Assessment Appeal Board depends upon there being evidence adduced to bring the case within section 46 (1) of the *Assessment Equalization Act*; that is, to prove that "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." Counsel therefore contended that there was no such evidence affording any comparison of the lands here in question with the assessment of other lands in the city, and therefore the evidence did not bring the case within section 46 (1), and the appeal should not succeed. It was the practice to assess lands at 50 per cent of their value. There is evidence of the value of the lands in question and of the lesser amount at which they were assessed by the Court of Revision. Also there is some evidence of the value and of the assessment of other parcels which were said to be comparable as affording some indication of the values which should have been assigned to the lands in question. Such evidence would permit the finding that the lands in question are of much greater value than that indicated by their assessment, so that the lands in question do not bear their fair and just relation to the value at which other lands and improvements are assessed. Whether or

not the Board's finding has correctly evaluated the evidence is not before us. In the result, this second ground should not succeed; but on the first ground the appeal should be allowed.

The reasons of the Assessment Appeal Board may raise some doubt as to whether the Board has correctly construed and applied section 46 (1), but that question need not be pursued since it is not raised by the stated case.

In conclusion, the answer to the first question should be in the negative; the answer to the second in the affirmative. In view of the answer to Question 2. Question 3 need not be answered.