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CANADIAN PACIFIC RAILWAY COMPANY

v.

CITY OF VANCOUVER

Supreme Court of British Columbia (No. X665/63)

Before: MR. JUSTICE F.K. COLLINS

Vancouver, October 1, 1963

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

Reasons for Judgment

The Canadian Pacific Railway Company, appellant, appeals by way of a stated case from the decision of the Assessment Appeal Board restoring the original assessment on two parcels of land situate in the City of Vancouver owned by appellant which had been reduced by the Court of Revision for that city. The parcels of land in question are respectively known as "Old Shaughnessy Golf Course," containing 61.77 acres, and "Langara Golf Course," containing 161.05 acres. These parcels are hereinafter referred to as the "Old Shaughnessy lands" and the "Langara lands," respectively.

The questions stated for opinion are as follows:

> "1. Has the City of Vancouver power to appeal from the Court of Revision to this Board?
>
> "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?"

With respect to the first question, in *Re The Corporation of the District of Surrey and Assessment Appeal Board* (1962) 35 D.L.R. (2nd) 721, at page 730, tried before me, it was decided that a district municipality was included within the meaning of the word "person" as used in the first portion of section 44 (1) of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, and amendments thereto, which provides:

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

The basis upon which I arrived at that decision appears to be the same basis, at least in part, upon which my brother Lord, J., as he then was, in *James S. Graham* v. *The City of Vancouver*,

in his reasons for judgment, not yet reported, held the City of Vancouver to be a "person" within the meaning of that word as used in section 44 (1).

In that case Lord, J., had before him for decision, as Question 6, a question which, in different form, posed the same question as the first question now under consideration in the case at Bar. I quote from that learned Justice's reasons two paragraphs with which I respectfully agree:

> Question 6 refers to the objection raised by the respondent that the City of Vancouver has no right to bring an appeal from the Court of Revision. The argument, as I understand it, is that section 44 (1) of the Act does not include the City of Vancouver within the category of a "person." That section provides for an appeal by a "person" who" is dissatisfied with the decision of the Court of Revision."
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> Under the *Interpretation Act*, R.S.B.C. 1960, chapter 199, a "person" is defined in section 24 (ff), *inter alia*, as including a "corporation," which in turn is defined in section 24 (g) as meaning, *inter alia*, a "municipality," and section 24 (cc) defines municipality, *inter alia*, as including "an area incorporated as a city." Finally, section 6 of the *Vancouver Charter*, Statutes of British Columbia 1953, chapter 55, provides in part: "The inhabitants of the area, the boundaries of which are described in this section, shall continue to be a corporation and a municipality with the name of City of Vancouver." [*My underlining*.] I think the foregoing makes it abundantly clear that the City of Vancouver is a person within the meaning of that word in section 44 (1) of the Act.

Question 1 is therefore answered in the affirmative.

Paragraphs 4 (b) and 5 of the case relate to Questions 2 and 3. Paragraph 4 (b) is here reproduced:

> On appeal to this Board the owner contended
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> > (b) that this Board could not vary the decision of the Court of Revision because there was before it no evidence of assessed value of other lands within the meaning of section 46 (1) (a) of the *Assessment Equalization Act*.

If Question 2 of the case were a question of fact, this Court would have no power to deal with it because the *Assessment Equalization Act* (*supra*) makes it clear that stated cases may be submitted to this Court on questions of law only. However, Question 2 is clearly a question of law. This was made clear by the Court of Appeal of this Province in *Provincial Assessors of Comox, Cowichan. and Nanaimo* v. *Crown Zellerbach Canada Limited and Crown Zellerbach Building Materials Limited* (1963) 42 W.W.R. (N.S.) 449. While the same conclusion may be drawn from the reasons for judgment of all of the learned *Justices* who heard the appeal, the point was dealt with in concise form by Wilson, J.A., as he then was, toward the bottom of page 470 when he used the following words:

> . . . where a conclusion reached by the Board and stated in the case was disputed, not on the ground that there was not sufficient evidence to support it, but on the basis that there was no evidence to support it. This is a question of law.

Paragraph 5 of the case states that with respect to the Langara lands the evidence of assessed values of other land was limited to land owned by appellant and situate between 54th and 57th Avenues and between Heather and Cambie Streets which was assessed at $9,150 per acre for the year 1963, and also states that with respect to the Old Shaughnessy lands the evidence of assessed values of other land was limited to (a) a 13.88-acre parcel also owned by appellant and situate between 37th and 41st Avenues and between Oak and Osier Streets, assessed at $12,530 per acre for the year 1963, and (b) Vancouver College lands situated between 38th and 41st Avenues and between Cartier and Hudson Streets divided into three parcels for the purpose

of assessment and assessed respectively at $13,250, $14,700, and $17,000 per acre. Counsel have stated their agreement that these latter assessments were also for the year 1963.

Section 46 (1) of the *Assessment Equalization Act* (*supra*), as substituted by Statutes of British Columbia, 1961, chapter 3, section 6, states the circumstances under which the Board may vary the amount of the assessment of real property appealed against. Section 46 (1) is here reproduced:

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

Appellant's counsel argued that the Vancouver College lands were sufficiently different from the Old Shaughnessy lands as to render it unfair to consider them as a basis for comparison of the assessment thereon with the latter lands. I did not understand him to argue that there actually were other lands or other comparable lands not owned by appellant which were available for the purpose of fairly comparing assessments in order that the Board might determine whether there was a fair and just relation between their respective assessed values and the assessed values of the Old Shaughnessy and Langara lands.

Appellant's counsel further argued that parcels of land owned by the appellant should not be properly regarded as "other land" within the meaning of those words as used in section 46 (1) (a). No judicial decisions were referred to in support of such argument. In my view the Board was entitled to consider for comparative purposes the 1963 assessment on any parcels of acreage situate in any fairly comparable district which assessments were not under any appeal to the Board. If they were limited to comparable lands in comparable districts, this would very greatly limit the comparable lands which were available for consideration. In view of these considerations the Board, in my view, were entitled to consider whether the assessed value of the Old Shaughnessy lands does or does not bear a fair and just relation to the assessed value of other somewhat comparable lands owned by appellant, particularly in view of the circumstance that the 1963 assessments of these other lands of appellant are not under appeal. This applies equally to the acreage referred to as the Langara lands. It should be pointed out that I do not wish these reasons to be construed as deciding that the Board was limited for the purposes of comparing lands and assessments to other like lands in similar districts. In a hypothetical case it could be that there might be no like lands in similar districts. In such a case I do not believe the Board would be unable to function under section 46 (1) (a).

It is not the duty of this Court to say whether it would have reached the same conclusion as the Board on the same evidence. It appears to me that such duty is limited to deciding whether there was any properly admissible evidence before the Board of "the value at which other land is assessed" which the Board was at liberty to consider for the purpose of arriving at its decision. In my view there was such properly admissible relevant evidence before the Board, and the Board was entitled to consider it.

Question 2 should he answered in the affirmative. In view of that affirmative answer, Question 3 does not require an answer.

Mention should be made that the questions submitted by the case did not require a consideration of section 46 (1) (h), and that the information relating to sales of other lands in the area contained in paragraph 6 of the case was considered to be irrelevant surplusage.

Counsel may speak to the question of costs.