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JAMES S. GRAHAM

v.

CITY OF VANCOUVER

Supreme Court of British Columbia (No. X668/63)

Before: MR. JUSTICE A.E. LORD

Vancouver, Sept. 19, 1963

Graham Wright for the Appellant
R.K. Baker and R.H. Stewart for the Respondent

Reasons for Judgment

The appellant is the owner of certain premises in the City of Vancouver upon which there are erected several buildings constituting a foundry. The appellant leases the premises to the company which operates the foundry and he is the manager of that company. The Court of Revision of the city reduced the assessment on certain of the improvements. The Assessment Appeal Board, on appeal by the city respecting three of the assessments, restored the original assessment. Mr. Graham now appeals from the decision of the Board by way of stated case.

The questions stated are as follows:

> "1. Was the Board correct in finding that the City of Vancouver appraiser is entitled to use, as his sole guide in making his assessment, replacement cost less depreciation, and does such basis of assessment alone result in a determination of actual value?
>
> "2. Was the Board, after finding that cost in itself does not represent value, correct in finding that absence of adequate evidence from an income or rental point of view entitles the appraiser to determine that cost is actual value and that an assessment so made complies with the law?
>
> "3. Does the assessment, as confirmed, result in an assessment to a particular owner as distinguished from any owner, and as such is the assessment contrary to the law or discriminatory?
>
> "4. If there was no evidence given of rentals for general warehouse buildings or for foundries but there was evidence of rentals for general industrial buildings, was the Board correct in finding that no consideration should be given to such evidence, and if not, is such an assessment contrary to the law?
>
> "5. Was the Board correct in finding that obsolescence for general industrial improvements is not obsolescence for foundry improvements in determining actual value?

"6. Was the Board correct in finding that it had jurisdiction?"

Section 37 (1) of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, reads:

> 37. (1) The Assessor shall determine the actual value of land and improvements. In determining the actual value, the Assessor may give consideration to present use, location, original cost, cost of replacement, revenue or rental value, and the price that such land and improvements might reasonably be expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value; and without limiting the application of the foregoing considerations, where any industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going concern.

It is to be noted that there are certain factors to which the Assessor is permitted to give consideration, such as present use, cost of replacement, revenue or rental value, etc., but in the case of industries and the like he must value the property as a going concern. In the *Provincial Assessors, etc.,* v. *Crown Zellerbach Canada Limited* (1963) 42 W.W.R. 449, Davey, J.A., in referring to this section, said at pages 455 and 456:-

> The statutory duty of the assessor is to find the "actual value" of the taxable property, but sec. 37 permits him to use several different methods and to consider many different elements in finding actual value. I do not think that the use of any specifically mentioned method of finding actual value, or the inclusion or exclusion of any enumerated element, provided there is evidence to support the reasoning, can be said to raise a question of law appealable to the courts on a stated case, for those matters lie in the judgment of the assessor and the assessment equalization board; *Reg.* v. *Penticton Sawmills Ltd.* (1954) 11 W.W.R. (N.S.) 351, at 353, 356.

In that case, too, it was made abundantly clear that the Court may look at the transcript of evidence before the Board only for the purpose, as Wilson, J.A., as he then was, at page 471 expressed it:

> . . . not to decide any question of fact, or to balance the evidence, but to decide, not whether there is sufficient evidence, but whether there is any evidence to justify a finding of the board that, in law, . . .

The stated case shows the following facts found by the Board:

> (a) That the appellant's appraiser by reason of the lack of evidence relating to comparable improvements was forced to fall back on the replacement cost approach, and that the issue between the parties was reduced to the question as to whether the method used by the appellant's appraiser was correct.
>
> (b) That in view of the lack of evidence on which to substantiate properly the value for the improvements, the appellant's appraiser was entitled to use the replacement cost approach less depreciation.
>
> (c) That the Board recognized that cost does not in itself represent value, but that in the absence of adequate evidence from an income or rental point of view, the appellant's appraiser had little alternative.
>
> (d) That the Board had jurisdiction.

The last finding is one of law not of fact.

I have read the relevant evidence for the purpose of finding whether there was any evidence to support the findings of fact. It is not necessary to quote this evidence, but it shows that the city assessor outlined his reasons for not using certain factors set out in section 37 (1) and for his decision to use the cost replacement value approach, which he was entitled to do. The appraiser for the respondent Graham gave his reasons for applying a rental basis to arrive at the actual value. The Board weighed this evidence and came to a conclusion on that evidence. I cannot see where any matter of law is involved. The Board's decision is one of fact. The questions are answered as follows:

> Question 1. Yes.
>
> Question 2. Yes.
>
> Question 3. No. There was evidence to show that no special value to the owner was considered.
>
> Question 4. The Board was correct in its finding.
>
> Question 5. Yes.
>
> 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."

Under the *Interpretation Act*, chapter 199, R.S.B.C. 1960, 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*, chapter 55, Statutes of British Columbia, 1953, 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 italics*.] 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.

Having made that finding, I think I should point out that in my opinion the wrong procedure was followed before the Board by the respondent Graham. At the opening of the appeal before the Court of Revision, his counsel merely recorded an objection that the Board had no jurisdiction to deal with an appeal by the city, and written arguments were subsequently delivered. The matter of jurisdiction is a question of law and is not within the jurisdiction of the Board to decide one way or the other. The powers and jurisdiction of the Board are set out in Part VIII of the Act, sections 31 to 36, and also, more specifically, with reference to powers on appeal, section 46. It is not a Court and cannot decide questions of law. In *Re Assessment Equalization Act*, re Appeal of *MacMillan, Bloedel & Powell River Ltd.* (1961) 36 W.W.R. 463, Wilson, J,. as he then was, said:

> The Board is a statutory creation not to be credited with any powers which are not expressly, or by the most compelling implication, entrusted to it.

Even if such power had been given, such power would be of doubtful validity in view of the decision of the Ontario Court of Appeal in *Toronto* v. *Olympia. etc., Club Ltd.* (1954) Q.R. 14, per Laidlaw, J.A.. at pages 20 and 21. In my opinion the proper procedure would have been to apply to the Board to have this point of law submitted to the Supreme Court for an opinion in accordance with section 51 (1) of the Act, which provides for such a question being submitted at any stage of the proceedings.