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THE CORPORATION OF THE TOWNSHIP OF RICHMOND

v.

THE RICHMOND FURNITURE COMPANY LIMITED

Supreme Court of British Columbia (No. X671/63)

Before: MR. JUSTICE JOHN S. AIKINS

Vancouver, November 8, 1963

W.T. Lane for the appellant
John Fraser for the respondent

Case Stated by Assessment Appeal Board

1. The land and improvements. the assessment of which was the subject of the said appeal, was property owned and occupied by the appellant within the Township of Richmond. The questions to be answered by this Court arise from the decision of the Appeal Board regarding a parcel of land and improvements described as Lot B of Lot 4 of Block B, Section 34, Block 5 north, Range 6 west, New Westminster Land Registry District.

2. The assessments for 1963 were $1,600 for land and $500 for improvements.

3. Prior to the 1963 assessment, certain improvements, which formerly housed a furniture factory, were destroyed by fire, leaving only a small portion remaining, including the concrete floor slab of the demolished building. The zoning by-law of the Municipality of Richmond prevents reconstruction of the factory on the land in question.

4. At the proceedings before the Appeal Board, the Assessor described the method which he employed to assess the land. His main technique, as amplified in Exhibits 2, 3, 4, and 5 filed in the proceedings of the Board (hereunto attached as Annexure I), was the comparative sales approach.

5. The appellant testified that in his opinion the land in question has a top sales value of $3,000 if the site were cleared and ready for construction. He also submitted one quotation for the cost of such clearing in the amount of $1,145, not counting the removal of certain other rock fill and wood waste. A written statement of the appellant's contentions was filed as Exhibit 1 in the proceedings of the Board (hereunto attached as Annexure II). The appellant tendered no evidence of the value of other or similar parcels of land.

6. In its decision dated June 26, 1963 (hereunto attached as Annexure III), the Assessment Appeal Board indicated that it accepted the appellant's evidence that the parcel of land under appeal, cleared and suitable for residential use, would be worth approximately $3,000. Thereupon the Board directed the land assessment reduced to $1,000 in order to reflect the cost of removal of the concrete slab as well as the existing improvements. The Board confirmed the assessment of $500 on the improvements.

7. The Corporation of the Township of Richmond was dissatisfied with the decision of the Board and has required the Board to submit this case for the opinion of the Supreme Court. Wherefore the following questions of law are humbly submitted for the opinion of this Honourable Court:

> "1. Was the Board correct in interpreting 'actual value,' within the meaning of section 37 (1) of the *Assessment Equalization Act*, as 'market value' and in basing the assessment on the estimated 'market value' made by the present owner some months after the assessment roll closed?
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> "2. If the answer to Question 1 is in the affirmative, was the Board correct in altering the assessment even though the assessment would not bear a fair and just relationship to the assessment of other like properties as alleged by the respondent? "

Reasons for Judgment

The Assessment Appeal Board, pursuant to the provisions of section 51 of the *Assessment Equalization Act* (chapter 18, R.S.B.C. 1960) and on the requirement of the appellant, The Corporation of the Township of Richmond, has submitted a case for the opinion of the Court. The questions upon which the opinion of the Court is sought are these:

> "1. Was the Board correct in interpreting 'actual value,' within the meaning of section 37 (1) of the *Assessment Equalization Act*, as 'market value' and in basing the assessment on the estimated 'market value' made by the present owner some months after the assessment roll closed?
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> "2. If the answer to Question 1 is in the affirmative, was the Board correct in altering the assessment even though the assessment would not bear a fair and just relationship to the assessment of other like properties as alleged by the respondent?"

During the course of argument on Friday last I had some doubt as to whether the principal points argued by counsel for the appellant were germane to the questions submitted. On further consideration I am satisfied that the two principal questions of law which were argued by Mr. Lane, counsel for the appellant municipality, are not raised either expressly or by implication by the questions actually before the Court.

A brief recital of what took place before the Assessment Appeal Board is necessary to an appreciation of the points argued by counsel for the appellant. Richmond Furniture Company Limited is the owner of a certain lot within the corporate limits of the appellant municipality. The company appealed the assessment of its property for 1963 to the Court of Revision. That Court reduced the assessment of the land to $1,600. The improvements are assessed at $500 and are not in dispute. Richmond Furniture Company Limited appealed from the decision of the Court of Revision to the Assessment Appeal Board, and the appeal was allowed, and the assessment of the land reduced to $1,000 and the assessment of improvements left at $500. The Corporation of the Township of Richmond, being dissatisfied with this decision, required the Board to state a case for the opinion of this Court.

Sometime before the 1963 assessment there was a furniture factory situate on the lot in question which was destroyed by fire, leaving a small portion of the building intact and leaving a large concrete floor slab and other debris which will have to be removed before the property can be used. The zoning by-law of the appellant municipality prevents reconstruction of the factory. Both appellant and respondent appear to have proceeded on the basis that the land may be used for residential purposes and that this is the most suitable use.

At the hearing before the Assessment Appeal Board, Mr. N. A. Carlson, who appeared for the Richmond Furniture Company, was permitted to put before the Board a statement in writing, addressed to the Board and signed by him, setting out in general the position taken by the

Richmond Furniture Company. This statement was marked Exhibit 1. Paragraph 2 of the statement, Exhibit 1, reads as follows:

> At least 2 real estate companies have indicated a top sales value of $3,000.00 if the site were cleared and ready for construction.

The Assessment Appeal Board appears to have acted on this statement and to have based its final disposal of the appeal upon the conclusion that the property in question would have had a sale value of $3,000 if the site had been cleared and ready for construction. Counsel for the municipality argued before me that the Board should not have allowed Mr. Carlson to put before the Board a written statement signed by him stating, in effect, what he had been told by two people representing real-estate companies concerning the value of the property because such evidence was hearsay and inadmissible. On this basis Mr. Lane submitted that in effect there was no evidence at all before the Board upon which the Board could make the finding that the property had a market value of $3,000 if the site were cleared and ready for construction. It seems to me patent that the question of whether or not the Board can properly receive in evidence a statement signed by a person presenting the case of an appellant setting out the opinion as to value of two people representing different real-estate companies is not raised in the questions asked in the case stated by the Board. I had some difficulty understanding a further argument as to admissibility raised by counsel for the appellant municipality, but the sense of his submission seemed to me to be this: that the Board should not receive in evidence the opinion of a real-estate man as to value unless there was also placed before the Board the material upon which such real-estate man based his opinion. The contention, as I understood it, was that treating the real-estate men who gave the opinion that the property had a top sales value of $3,000 as being experts, then their expert opinions should not be received in evidence unless the material upon which the opinions were based was also put before the Board. The argument, as I understood it, was that even if the opinions of real-estate men could be put before the Board in hearsay form, that it could not be put before the Board unless accompanied by the material upon which they based their opinions. It is sufficient to say, I think, that this question, too, is not raised in the questions set out in the stated case.

The two arguments which I have stated and which were raised by counsel for the appellant municipality are in my opinion clearly outside the scope of the stated case. I do not, I think, have power under the relevant legislation to decide questions which are not raised in the stated case. The Act makes provision for a case to be remitted to the Board for amendment (section 51 (6). The question before me then is this: should I remit the case to the Board for amendment so that the issues raised by counsel for the municipality may be put in the form of suitable questions, or should I decide the matter without regard to the principal arguments advanced on behalf of the appellant municipality because such arguments do not relate to the questions in the case? I confess to some doubt as to the proper course to follow. In the instant circumstances I have decided not to remit the case for amendment. It seems to me that the appellant must bear the principal responsibility for the form of questions put in the case. The questions put to the Court do not raise the two issues as to admissibility of evidence argued for the appellant municipality. If the matter be remitted for amendment. a further hearing will be required. The amount of assessment in issue is minimal. This application comes before the Court at a late date, bearing in mind that the final date for decision by the Statute, as extended by Order in Council, as I am informed by counsel, is the 15th of November. In these circumstances I am not going to remit the case so that the questions may be amended to reflect the questions of admissibility of evidence which were argued.

The only argument of substance relating to the first question advanced by the appellant was this: the relevant date for the determination of actual value was the 31st of December, 1962; it was submitted to the appellant that the Board erred in acting upon the opinions expressed in paragraph 2 of Exhibit 1 (quoted above) because the opinions as to value embodied therein did not relate to the 31st of December, 1962. The opinions were obviously given at some later date. Exhibit 1 is dated the 18th of March, 1963.

Assuming the admissibility of Exhibit 1, in my view the opinions as to value therein expressed and given sometime in the early spring of 1963, and before the 18th of March of that year, were relevant to the question of actual value as at the 31st day of December, 1962. There is nothing to indicate any change in the condition of the property between December 31, 1962, and March 18, 1963. The Chairman of the Board asked the Assessor about the trend of property prices, and there is nothing in the latter's answers to indicate any marked change in values.

I hold, granted the admissibility of Exhibit 1, that the opinions therein set out as to value were relevant. The Board apparently preferred the evidence of value set out in Exhibit 1 to the valuation of the Assessor. Granted relevancy, the Board preferring the evidence of value in Exhibit 1 does not involve any question of law, a question of fact only is involved.

I have stated the only argument that seemed to me to have substance that was advanced in respect to Question 1. I think the answer to Question 1 must be in the affirmative in the circumstances of this particular case. The Assessor reached his conclusion as to actual value on the basis of comparative sales of six properties, made, taking the dates from the title descriptions in Exhibit 2, over the period 1958 to 1961. The Assessor, in my opinion, was using a market value approach in reaching his conclusion as to actual value on the basis of comparative sales. As far as I can see, the only factor taken into account by the Assessor in reaching a figure for actual value of the land in question, leaving aside considerations of the cost of clearing the land of concrete slab and debris thereon and the part of the building left after the fire, was market value based on comparative sales. The respondent's approach to value of the land only, leaving out the question of cost of clearing, was based entirely on market value.

Section 37 (1) of the *Assessment Equalization Act* states the matters which the Assessor may consider in determining actual value, and one of the matters stated is "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." In my view all the evidence before the Board was directed to market value. There being, in effect, no evidence before the Board of actual value based on other considerations particularized in section 37 (1), I think it impossible to say that the Board was wrong in basing its decision in this particular case on the evidence of market value. The answer to the first question must therefore, in my opinion, be in the affirmative.

There was little argument directed to the second question. The second question involves section 46 (1) of the Act:

> 46. (1) The amount of the assessment of real property appealed against may be varied by the Board, unless
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> (a) the value of the individual parcel under consideration bears 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; and
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> (b) the assessed values of such land and improvements are not in excess of actual value as determined under section 37.

The list of assessment comparisons filed by the Assessor shows that the assessment of $1,000 for the respondent's property is low in relation to the other properties set out on the list of comparisons. The property of the respondent would appear to me to be unique in the sense that it had on it a concrete slab, debris, and part of a building largely destroyed by fire, all of which would require clearing away before the property would be of any real use. It appears from the Board's reasons for its decision that the assessment was reduced to $1,000 in order to reflect the cost of demolition and clearing. The Board, in its reasons, indicates that the assessment should be increased to approximately $1,500 if the property is cleared. This figure, while somewhat lower than the comparative assessments, is not so markedly lower as to show that the Board was wrong in varying the assessment, and that the Board by varying the assessment contravened the

provisions of section 46 (1). I take it from Question 2, by the use therein of the words "as alleged by the respondent," that the Board is not to be taken to be agreeing that in lowering the assessment it put the assessment at a figure which does not bear a fair and just relationship to the assessment of other properties and that this is the allegation of the municipality. The property in question does appear to have a unique clearing problem affecting its value. In my opinion it cannot be said that the Board erred in the application of section 46 (1). The answer to the second question in my opinion should be in the affirmative.

I have a discretion as to costs under section 51 (4) of the *Assessment Equalization Act*, and I direct that the costs of and incidental to this stated case be taxed and paid by the appellant municipality.