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ALKALI LAKE RANCH LTD.

v.

ASSESSMENT DISTRICTS OF QUESNEL FORKS AND LILLOOET

British Columbia Court of Appeal

Before: MR. JUSTICE H.I. BIRD, MR. JUSTICE T.G. NORRIS and MR. JUSTICE A.E. LORD

April 24, 1964

C.C. Locke and W.R.D. Underhill for the Appellant
A.E. Hobbs for the Respondent

Reasons for Judgment of Mr. Justice Morris April 24, 1964.

Per curiam:

This is an appeal from the determination by Branca, J., of the answers to certain questions in a case stated in accordance with the provisions of section 51 of the *Assessment Equalization Act* of British Columbia and involves the interpretation to be placed on section 37 of the Act and in particular subsection (1) of that section.

Subsection (1) of section 37 and subsection (6) (d) of the section, which is also to be considered, read as follows:

> 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.
>
> (6) . . .
>
> (d) lands classified as "farm land" in a municipal corporation or rural area shall, while so classified, be assessed at the value which the same have for such purposes without regard to their value for any other purpose or purposes, but the assessed value of improvements on farm land shall be determined under subsection (3).

The appeal to this Court is in the words of the section, "upon any point of law raised upon the hearing of the appeal by such Judge" (in this case Branca, J.).

The learned trial Judge answered 12 questions submitted to him, and the appeal to this Court is on points of law relating to the answers to Questions 1 to 8, inclusive, and 11 of the stated case. Such questions with the answers given by Branca, J., are as follows:

Q.-"1. In complying with the provisions of the Statute with regard to the valuation of 'farm land,' was not the Assessor and (or) the Board obliged to consider the value of the land as the property of a going concern with regard only to its value for farm purposes?"

A.-Yes.

Q.-"2. Did the Assessor and (or) the Board in this case comply with the provisions of the Statute?"

A.-Yes.

Q.-"3. In complying with the provisions of the Statute in regard to valuation, was not the Assessor and the Board obliged to consider the income of the particular parcel of farm land concerned?"

A.-No.

Q.-"4. Is not the income approach to valuation a proper method of valuation according to the Statute?"

A.-Yes, but not mandatory.

Q.-"5. Is not the income approach to valuation made mandatory by the Statute in this case?"

A.-No.

Q.-"6. Did the Board err in law in failing to adopt the' income approach' as the basis of the assessment of land classified as 'farm land'?"

A.-No.

Q.-"7. Did the Assessor present any legally admissible evidence at all?"

A.-Yes.

Q.-"8. Did the Board err in law in finding that the Assessors were correct in their determination of the assessment of each parcel of land classified as farm land using mass appraisal procedures and the Farm Land Value Schedule as varied by the land value adjustments?"

A.-No.

Q.-"11. Did the Board err in law holding that the income approach as adopted by the appellants inevitably reflects the value of management?"

A.-No.

The appellant is the owner of a large cattle-ranch in the southern Cariboo District of British Columbia which comprises 37,938 acres "titled" land with leaseholds, and lands under grazing permits.

In substance the argument developed before this Court turned on alleged errors in law relating to the question as to whether or not in view of the fact that the Assessors were required by the Statute to value the land and improvements of the appellant "as the property of a going concern," the Assessors erred in not valuing the land solely on the basis of the income the land produced

as such property of a going concern. The appeal is concerned with land as distinct from improvements, which are assessed separately, and it was not argued that the words "land and improvements" as the phrase appears in section 37 (1), "the land and improvements so used shall be valued as the property of a going concern," were not to be read disjunctively.

Counsel for the respondents argued that a cattle-ranch did not come within any of the words "any industry, commercial undertaking, public utility enterprise, or other operation." In the absence of any authority to the contrary, or any sound reason otherwise arising out of the section itself, I must find that a cattle-ranch is a commercial enterprise, as the words are used in the section. Cattle-ranch operations are so diverse that they might well come also within the words "or other operation."

Under the section the Assessor is required to determine the "actual value." This is a question of fact to be determined by the evidence. As to what the words mean, see: *Stock Exchange Building Corporation* v. *City of Vancouver* (1945) 61 B.C.R. 205 at 209 and 210 quoting with approval Duff, C.J.C., in *Montreal Island Power Co.* v. *The Town of Laval des Rapides* (1935) S.C.R. 304 at 305-6. These authorities indicate that the term "cash value" means "exchangeable value-the price which the subject will bring when exposed to the test of competition." In determining this actual value the Assessor is given power to "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." Then follow these significant words, "*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." I interpret the words "as the property of a going concern" to mean that the main undertaking of which the land under assessment is a part is to be treated as still being operated and the land is not to be valued separately as bare land. *See* Black's Law Dictionary (4th edition), page 821, which defines "going concern" as follows:-

> An enterprise which is being carried on as a whole, and with some particular object in view. The term refers to an existing solvent business, which is being conducted in the usual and ordinary way for which it was organized. When applied to a corporation, it means that it continues to transact its ordinary business. . . . A firm or corporation which, though embarrassed or even insolvent, continues to transact its ordinary business.

See also Appraisal Terminology and Handbook (1954 edition), page 160, published by the American Institute of Real Estate Appraisers.

Counsel for the appellant argues that the only way in which any piece of land being the property of a going concern can be valued is on an income basis, and that in taking into account comparative sales the Assessor has fallen into error. However, the very broad words indicating the extent of the considerations of which the Assessor shall take account are specifically stated not to be limited by the reference to "property of a going concern" and make it clear that all factors that go to indicate "actual value" may be considered including comparative sales. I have no doubt that in the exercise of their wide discretion the Assessors may consider, among other factors, the matter of income. This is made clear by section 37 (1), which permits them to give consideration to revenue and rental value. Such income clearly could not be considered per se as the only factor but to show the productivity of the land as one factor indicating "actual value": *City and County of Denver* v. *Quick*, 134 A.L.R. 1120, 108 Colo. 111. As a factor of actual value the Assessor would also take into account the fact that the undertaking, of which the land was a part, was a going concern. Income considered *solus* does not necessarily indicate actual value. Considerations of good or bad management which have no place in land assessment under the Statute might be involved in such an approach, and for that reason the income which was produced must be considered in the limited way referred to and subject to the checks which other considerations showing "actual value" supply.

Giving "going concern" the meaning I have ascribed to it, there is ample indication in the proceedings to show that the Assessor obeyed the mandatory language of section 37 (1) and did value the land and improvements as the property of a going concern, and arrived at their actual value as farm lands by applying such further permissible considerations as he deemed necessary in the circumstances.

The Analysis and Schedule of Farm Land Values (Exhibit 35) was referred to extensively and in detail. In my opinion it was totally irrelevant to the matters at issue before this Court. The only purpose for which it could be used was to indicate the principles which the Assessors followed, which were really not in dispute. Its detail dealt with questions of fact which could not be considered by this Court.

I would dismiss the appeal.