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CANADIAN PACIFIC RAILWAY COMPANY

v.

CITY OF VANCOUVER

Supreme Court of British Columbia (No. X661/64)

Before: MR. JUSTICE A.D. MACFARLANE

Vancouver, September 4, 1964

F.E. Dent and A.G. Graham for the Appellant
R.K. Baker, Q.C. and B.W. Wasson for the Respondent

Case Stated by Assessment Appeal Board

1. The appeal by the City of Vancouver to this Board concerned the assessed value of two parcels of land owned by Canadian Pacific Railway Company known as "Old Shaughnessy Golf Course," containing 61.77 acres, and "Langara Golf Course," containing 161.05 acres.

2. The Old Shaughnessy and Langara properties were assessed at $833,895 and $1,433,345 respectively for the year 1964, which were the amounts placed by the Assessor on the assessment roll as Nos. 58-4890-00 and 58-5400-00. Such assessments amount to $13,500 per acre and $8,900 per acre respectively.

3. The Court of Revision reduced the assessments to $463,270 for Old Shaughnessy and $593,470 for Langara. Such assessments amount to $7,500 per acre and $3,685 per acre respectively.

4. On appeal to this Board the owner contended

> (a) that the city only acquired the right to appeal to this Board effective January 1, 1964, and since the assessments in question had to be completed by December 31, 1963, pursuant to the provisions of section 350 of the *Vancouver Charter*, the city had no right to appeal to this Board, and this Board was without jurisdiction to hear the appeal; and
>
> (b) that if the Board did have the jurisdiction to hear the appeal, such appeal must be dismissed because of the failure of the city to establish that its Council consented to making the appeal as required by section 385 of the *Vancouver Charter*; and
>
> (c) that if the Board did have the jurisdiction to hear the appeal, the Board was obliged to accept the assessments made by the Court of Revision by reason of the failure of the city's Assessment Commissioner to assess the golf courses as required by section 37 (1) of the *Assessment Equalization Act*.

5. The Board found as a fact that the taking of the appeal was authorized by a resolution of Council.

6. The city's Assessment Commissioner did not value the golf courses as going concerns.

7. This Board allowed the city's appeal and restored the original assessments set forth in paragraph 2 hereof. The owner has therefore required the Board to state a case for the opinion of this Honourable Court pursuant to the provisions of the *Assessment Equalization Act*.

Wherefore the following questions are humbly submitted to this Honourable Court for opinion:

> "1. Was the Board correct in law in holding that the right to appeal from the Court of Revision given to the city by the 1964 amendment to section 385 of the *Vancouver Charter* applied to the 1964 assessment roll?
>
> "2. If the answer to Question 1 is in the affirmative, was the Board correct in law in holding that the city had complied with section 385 of the *Vancouver Charter*, as amended?
>
> "3. Is consent of Council a condition precedent to giving this Board jurisdiction?
>
> "4. Was the Assessment Commissioner of the city (and therefore this Board) required to consider the value of the golf courses as properties of going concerns?
>
> "5. Did the Board err in law in holding that the city had complied with section 37 of the *Assessment Equalization Act*? "

Reasons for Judgment

The Assessment Appeal Board, acting under section 51 (2) of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, at the request of the owner of certain lands situated in the City of Vancouver, has submitted a case for the opinion of the Court upon questions of law. A transcript of the evidence and copies of the exhibits which were before the Board are filed as required by section 51 (5), but are not made a part of the case as stated. There is also produced a certified copy of an Order in Council No. 2238, whereby the dates for hearing and determination by the Court of all cases stated by the Assessment Appeal Board in 1964 are extended to October 15, 1964.

The questions presented relate to assessments for the purposes of the 1964 taxation-year of two parcels of land known as "Old Shaughnessy Golf Course" and "Langara Golf Course" which are owned by Canadian Pacific Railway Company, the titles being held for it by the Royal Trust Company as trustee. City's Assessment Commissioner made and completed his assessment by December 31, 1963, as required by section 350 of the *Vancouver Charter*. Upon appeal by the owner to the Court of Revision, that tribunal reduced the assessments substantially. An appeal by the city from the decisions of the Court of Revision to the Assessment Appeal Board was allowed, and the original assessments made by the Assessment Commissioner were restored. The Board then stated and presented the case now under consideration.

The statement of facts, forming part of the case, includes these two important sentences:

> 5. The Board found as a fact that the taking of the appeal was authorized by a resolution of Council.
>
> 6. The city's Assessment Commissioner did not value the golf courses as going concerns.

On March 16, 1964, the Court of Appeal delivered judgment in *C.P.R.* v. *City of Vancouver* (1964) 48 W.W.R. 98. By that judgment, which related to assessments of the same properties for the 1963 taxation-year, it was decided that the city had no right of appeal from the decision of the Court of Revision. The *Vancouver Charter Amendment Act, 1964*, chapter 72, S.B.C. 1964, assented to on March 20, 1964, contains the following sections:

13. Section 385 is repealed and the following substituted:

"385. (1) The City or any person dissatisfied with the decision of the Court of Revision constituted under the *Assessment Equalization Act*, 1953, may appeal therefrom to the Assessment Appeal Board as constituted under the said Act and in the manner therein set out.

"(2) The Assessment Commissioner may not appeal under subsection (1) except with consent of the Council.

"(3) The provisions of sections 45 to 48, inclusive, and section 51 of the *Assessment Equalization Act* apply, mutatis mutandis, to an appeal brought under this section."

14. Section 13 shall be deemed to have come into force and effect on the first day of January, 1964, and is retroactive to give full force and effect to the provisions thereof on and after that date.

A consideration of these sections will provide the answers to the first question submitted by the case as follows:-

"1. Was the Board correct in law in holding that the right to appeal from the Court of Revision given to the city by the 1964 amendment to section 385 of the *Vancouver Charter* applied to the 1964 assessment roll?"

Counsel for the owner contends that the intention of the Legislature, to be derived from an interpretation of sections 13 and 14 of the 1964 Statute, is that the new section 385 should be applied only to assessments made in 1964 and subsequent years for purposes of taxation in 1965 and subsequent years respectively. He submits that the language of section 14 is not sufficiently explicit to permit application of the new section to assessments made by the Assessment Commissioner in 1963. He says that on December 31, 1963, the owner had a right to deal with the assessments then made untrammelled by any right in the city to appeal from a decision of a Court of Revision. He referred to the following statutory provisions as indicating the precision of language employed by the Legislature when it intends to apply legislation to assessment rolls retroactively: S.B.C. 1955, chapter 75, section 9; S.B.C. 1956, chapter 46, section 7; S.B.C. 1960, chapter 37, section 37; S.B.C. 1962, chapter 41, section 50.

It must be observed that these enactments, alleged to be analogous to section 14 (*supra*), deal with matters of substance such as rates of taxation and the designation of property to be taxed or exempt from tax. Section 14 of the 1964 Charter Amendment Act merely creates a right of appeal which did not exist previously-a procedural matter. It is clear that there could be no decision of a Court of Revision relating to an assessment made by the Commissioner on December 31, 1963, until after January 1, 1964, since notice of assessment, which must be given after completion of the assessment roll, may be so given no later than the 31st day of December annually (vide *Assessment Equalization Act*, section 38 (1), and the *Vancouver Charter*, section 352). I was informed by counsel that the decision of the Court of Revision from which the city appealed herein was made before the passing of the Charter Amendment Act, 1964. I think the words of section 14 are unambiguous and their meaning clear. They must be given effect. The new section 385, as enacted in March, 1964, applies to the assessment here involved so as to give the city the right of appeal to the Assessment Appeal Board from the decision of the Court of Revision.

The second and third questions, which may be dealt with conveniently together, are as follows:

"2. If the answer to Question 1 is in the affirmative, was the Board correct in law in holding that the city had complied with section 385 of the *Vancouver Charter*, as amended?

"3. Is consent of Council a condition precedent to giving this Board jurisdiction?"

The only manner in which it was suggested the city had failed to comply with section 385 was the assertion that it had not proved before the Board that the taking of the appeal was authorized by the City Council. Reference was made to section 137 (1) of the *Vancouver Charter*, providing that, with certain irrelevant exceptions, the powers of the city shall be exercisable by the Council, and section 151, providing that the powers of the Council may be exercised by by-law or resolution. I have already pointed out that in the case as stated the Board certifies that it has found as a fact that the taking of the appeal was authorized by a resolution of Council. Faced with this, counsel for the owner invited me to examine a copy of the resolution with a view to convincing me that its terms do not justify the finding of the Board. I declined this invitation because I am restricted by section 51 (2) of the *Assessment Equalization Act* to considering questions of law only. The sufficiency of the evidence is not a question of law. Counsel then suggested, but did not ask, that I remit the case to the Board for amendment so that the Board might submit the question whether there was any evidence before it of authorization by the city. In the circumstances, I did not think fit to do so, and in so deciding I had regard to the provisions of section 25 of the *Assessment Equalization Act*, which reads:

> 25. The Board may, in its discretion, accept and act upon evidence by affidavit or written statement or by the report of any officer appointed by it or obtained in such other manner as it may decide.

I cannot say that the Board was wrong in law in finding that the city complied with section 385.

The fourth and fifth questions may likewise be considered conveniently together. They are as follows:

> "4. Was the Assessment Commissioner of the city (and therefore this Board) required to consider the value of the golf courses as properties of going concerns?
>
> "5. Did the Board err in law in holding that the city had complied with section 37 of the *Assessment Equalization Act*? "

The answers to these questions depend upon an analysis of section 37 (1) of the *Assessment Equalization Act* in the light of the Board's statement that the Assessment Commissioner did not value "the golf courses" as going concerns. As the Board has restored the Commissioner's assessments, I conclude that it also did not value the courses as going concerns. Section 37 (1) reads 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.

Its provisions have been considered by this Court and by the Court of Appeal on several occasions. The first sentences impose upon the Assessor what may be described as the primary and basic duty of determining actual value. The second sentence provides guidance and direction to the Assessor in determining that value. By the first part of that sentence he is permitted to consider a number of factors. The second part is mandatory in the circumstances to which it applies, namely, "where any industry, commercial undertaking, public utility enterprise, or other operation is carried on," subject to the effect of the phrase "without limiting the application of the foregoing considerations." The effect of this phrase was considered by the Court of Appeal in *Re Assessment Equalization Act*: *Alkali Lake Ranch Limited* vs. *Provincial Assessors* (1964) 48 W.W.R. 120, a case which involved lands on which a commercial undertaking or "other operation"

was carried on. It was held that although the Assessor must value such lands as the property of a going concern, he need not necessarily determine that such value is actual value. Norris, J.A., delivering the judgment of the Court, said at page 124:

> 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 distinction between that case and the present is apparent because here "the golf courses" were not valued as properties of going concerns. The problem then resolves itself into the question whether the golf courses fall within the description "any industry, commercial undertaking, public utility enterprise, or other operation." It is, of course, implicit in the Board's decision that the Board came to the conclusion that they did not fall within that description, since it is only if they do so that it becomes mandatory to value them as properties of a going concern. In my opinion this question-i.e., whether the golf courses fall within the description-is a question of fact or at most, of mixed law and fact, but is not a question of law only. There is a large number of reported cases dealing with the distinction between questions of law and of fact. I shall refer only to the decision of the Supreme Court of Canada in *Township of Tisdale* v. *Hollinger Consolidated Gold Mines* (1933) S.C.R. 321, in which Cannon, J., delivering the judgment of the Court, said at page 323:

> The construction of a statutory enactment is a question of law, while the question of whether the particular matter or thing is of such a nature or kind as to fall within the legal definition of its term is a question of fact.

I do not overlook the fact that in the Alkali Lake Ranch case (*supra*) the Court did consider the argument that a cattle-ranch did not come within any of the words "any industry, commercial undertaking, public utility enterprise, or other operation." It does not appear, however, that any issue was raised or decided as to whether this argument raised a question of law or of fact. Further, it does appear (p. 122) that the real point of that case was whether the Assessors erred in not valuing the land solely on the basis of the income the land produced as property of a going concern. For these reasons I have concluded, with respect, that there is nothing in the Alkali Lake Ranch decision which binds me to consider on this stated case the question whether the golf courses fall within the statutory description "any industry, commercial undertaking, public utility enterprise, or other operation is carried on." The question relates not to golf courses in general, but to these golf courses in particular.

I should add that counsel on either side referred in their arguments to the evidence before the Board as to the nature of these golf courses and the manner in which they are operated, thus, in effect, inviting me to look at the evidence for the purpose of deciding for myself whether they do fall within the statutory description. I have not looked at this evidence and, before deciding not to do so, I considered carefully the views expressed by Davey, J.A. (at pp. 451-452), and by Wilson, J.A., as he then was (at pp. 467-471), in *Provincial Assessors* v. *Crown Zellerbach* (1963) 42 W.W.R. 449. I do not consider it necessary to look at the evidence in order to interpret or explain the statement of facts contained in or the questions of law raised by the stated case. Further, it appears, from the arguments addressed to me relating to the evidence before the Board, that there was evidence on the manner of operation of the golf courses. It has not been suggested that there wasn't any evidence.

Accordingly, I am quite unable to say that the Assessment Commissioner or the Board was required to value the golf courses as properties of going concerns or that the Board has erred in law in holding there has been compliance with section 37 of the *Assessment Equalization Act*.

I will add a comment on the form of some of the questions propounded by the stated case. Speaking generally, the decisions of the Board do not require affirmance or approval by the Court

for their efficacy. They stand unless held to be wrong in law. The Court should therefore, as a general rule, be asked whether the Board has erred or been wrong, not whether it was right or correct.

The questions submitted are, for these reasons, answered as follows:

> Q.-"1. Was the Board correct in law in holding that the right to appeal from the Court of Revision given to the city by the 1964 amendment to section 385 of the *Vancouver Charter* applied to the 1964 assessment roll?" A.-Yes.
>
> Q.-"2. If the answer to Question 1 is in the affirmative, was the Board correct in law in holding that the city had complied with section 385 of the *Vancouver Charter*, as amended?" A.-Yes.
>
> Q.-"3. Is consent of Council a condition precedent to giving this Board jurisdiction?" A.-No answer necessary since authority to appeal was given by resolution of Council.
>
> Q.-"4. Was the Assessment Commissioner of the city (and therefore this Board) required to consider the value of the golf courses as properties of going concerns?" A.-No.
>
> Q.-"5. Did the Board err in law in holding that the city had complied with section 37 of the *Assessment Equalization Act*?" A.-No.

The city is entitled to costs against the owner.