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TRANS MOUNTAIN OIL PIPELINE COMPANY

v.

TOWN OF HOPE
and
THE CORPORATIONS OF THE DISTRICTS OF BURNABY AND SUMAS

Supreme Court of British Columbia (No. X749/65)

Before: MR. JUSTICE J.G. GOULD

Vancouver, Sept. 15, 1965

C.C.I Merritt, Q.C. and A.C. Ree for the Appellant
J. Alan Baker, Q.C. for the Town of Hope
W.L. Sterling for the District of Burnaby
F.S. Rosborough for the District of Sumas

Reasons for Judgment

This matter comes before me as a stated case pursuant to subsection (2) of section 51 of the *Assessment Equalization Act*.

By consent these three appeals before the Assessment Appeal Board were heard together on May 21, 1965.

Each appeal is against the assessment from the real-property assessment roll under the *Municipal Act*, R.S.B.C. 1960, chapter 255, and amendments thereto, for municipal taxation purposes of certain tanks which are part of an extensive oil pipe-line system, transporting oil over more than 700 miles from Edmonton in the Province of Alberta and from Kamloops in the Province of British Columbia to refineries in the Lower Mainland in British Columbia and in the State of Washington.

The valuation of the tanks is not in issue. The only issue is whether the tanks are assessable at all.

The unanimous judgment of the Assessment Appeal Board states, *inter alia*, that the only question is whether or not the tanks in issue are, in fact, "storage tanks" within the meaning of the relevant Statute. The Board then goes on to hold that if the tanks in question are "storage tanks," they are clearly assessable. With that finding I agree.

The relevant Statute making "storage tanks" assessable is the *Municipal Act*, R.S.B.C. 1960, chapter 255, section 2, the relevant parts being respectively the definition of "improvements," firstly, for all purposes other than levying school rates, and then for the purpose of levying school rates. In both subsections the words "storage-tanks of whatever kind or nature" occur, and both definitions commence with the word "includes."

Counsel cited the following cases: *King* v. *Bridge River Power et al.* (1949) S.C.R. 246 at 257 and 258; *Re Assessment Equalization Act 1953 & Re Orr's Assessment* (1955) 16 W.W.R. 25 at 28; *Re Assessment Equalization Act, 1953, re Burrard Dry Dock* (1955-56) 17 W.W.R. 92 at 93 and 94; *Gray* v. *Lount* (1933) 1 W.W.R. 51 at 53; *Scott Fruit* v. *Wilkins* (1920) 3 W.W.R. 155 at 157; *City of Ottawa* v. *Ottawa Elec. Ry.* (1922) 52 O.L.R. 664 at 674; two unreported cases-*Burnaby & B.C. Electric*, Coady, J., Vancouver 452/52, and *Burnaby & Shell Oil*, Wilson, J., Vancouver 457/53; *Elmsthorpe Rural Mun.* v. *Dominion Fire & Clay* (1944) 2 D.L.R. 386 at 391; *Greenmelk Co.* v. *Township of Chatham* (1955) O.W.N. 757 at 762; *C.P.R. Co.* v. *City of Vancouver* (1964) 47 D.L.R. 157 at 161; *Blue* v. *Pearl Assurance Co. Ltd.* (1940) 7 Insurance Law Reports 300 at 304: *Vancouver* v. *Richmond* (X585/58), Collection of Stated Cases, *Assessment Equalization Act*, page 53, Case No. 14, and on appeal, page 56.

In addition, there were dictionary citations on the meaning of the words "storage" and "tanks," and some submissions made on the fact of the words "storage-tanks" being hyphenated in the legislation.

In my view this case falls squarely within the principles enunciated by McFarlane, J. (as he then was), in the case of *C.P.R. Co.* v. *City of Vancouver*, *supra* (affirmed on appeal, at this date unreported), wherein that learned Judge says, at pages 162 and 163:

> 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 arid 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 *Tisdale Tp.* v. *Hollinger Consolidated Gold Mines Ltd.* (1933) 3 D.L.R. 15, (1933) S.C.R. 321, in which Cannon, J., delivering the judgment of the Court, said at p. 16 D.L.R., p. 323 S.C.R.:
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> "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 (at p. 85 D.LR., p. 122 W.W.R.) 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.

The Assessment Appeal Board has held in its decision that the tanks in question are "storage-tanks" within the meaning of the Statute. This, in my view, is a finding of fact.

I am precluded by the *Assessment Equalization Act* from dealing with a matter which is not a question of law alone, unless I am prepared to say that the Assessment Appeal Board did not have before it any evidence from which its conclusion could properly be drawn. This I am not prepared to say.

A transcript of the evidence was filed with the stated case herein, as required by the Statute.

In my view, the proposition that there was no evidence at all to support the finding of the Assessment Appeal Board is quite untenable. There was ample evidence by which that Board could come to the conclusion it did on this particular issue of fact. These last words are not to be construed as in any way purporting to decide whether or not the tanks in question are "storage-tanks" within the meaning of the Statute. That finding is the precise matter of fact which is beyond my power to review.

Questions enunciated in the stated case herein and the relevant answers :

> "1. Did the Board err in deciding that the only question was whether the said tanks were 'storage-tanks' within the meaning of section 2 of the *Municipal Act*, R.S.B.C. 1960, chapter 255?"
>
> *Answer:* No, and its further decision, that the said tanks are "storage-tanks," effectively disposes of the sole issue herein-namely, assessability.
>
> "2. Did the Board err in failing to decide that all or any of the said tanks were personal property and therefore they were not assessable within the meaning of the said Act?"
>
> *Answer:* The answers to this double-barrelled question would be superfluous in the light of the disposition of the main issue herein.
>
> "3. Are any of the said tanks 'improvements' within the definition of '"improvements" for the purpose of levying school rates,' contained in section 2 of the said Act, and are they assessable for such purposes?"
>
> *Answer:* The Assessment Appeal Board has found as a matter of fact that the tanks are "storage-tanks" within the definition of "improvements" for the purpose of levying school rates, contained in section 2 of the Act. It follows as a matter of law that they are assessable as such.
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> "4. Are any of the said tanks 'improvements' within the definition of '"improvements" for all purposes other than levying school rates,' contained in section 2 of the said Act, and are they asssessable for such purposes?"
>
> *Answer:* Same answer, *mutatis mutandis*, as that to Question 3 above.
>
> "5. Did the Board err in deciding that all the said tanks were storage-tanks' within the meaning of the said Act?"
>
> *Answer:* The Board's decision on this is on a matter of fact and, therefore, not reviewable by me.

Judgment will go accordingly and costs will follow the event. If counsel are unable to agree thereon, they may speak to the matter.