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WESTERN FOREST INDUSTRIES LIMITED

v.

VICTORIA ASSESSMENT DISTRICT

Supreme Court of British Columbia (1965)

Before: MR. JUSTICE F. CRAIG MUNROE

Victoria, November 1, 1965

J.A. Fraser and G.N. Munroe for the Appellant
K.C. Murphy for the Respondent

Reasons for Judgment

Pursuant to section 51 (1) of the *Assessment Equalization Act*, the Assessment Appeal Board has stated two questions of law for the opinion of the Supreme Court arising in connection with the appeal now pending before it, and has reserved its decision until the opinion of the Court has been given.

The questions so stated read as follows:

"1. Has the Assessment Appeal Board jurisdiction to hear and adjudicate upon the appeal of the appellant against the assessment of the timber licences?

"2. If Question 1 is answered in the affirmative, are the timber licences assessable and taxable under the provisions of the *Taxation Act*, being chapter 376 of the *Revised Statutes of British Columbia, 1960*, and amendments thereto?"

Counsel agreed at the hearing before me that the real meaning and purport of Question No. 1 relates to the power of the Assessment Appeal Board to rule upon the question of assessability of the timber licences in question and that, accordingly, Question No. 1 should be reworded as follows:

"1. Has the Assessment Appeal Board jurisdiction under the *Taxation Act* and the *Assessment Equalization Act* to determine whether or not the timber licences in question are legally subject to assessment and taxation?"

It is the submission of the appellant that the timber licences in question are not legally assessable or taxable by virtue of the provisions of section 36 of the *Taxation Act*, and that the Assessment Appeal Board should, in fulfilment of its statutory duty, determine the liability of the appellant to be assessed and taxed or to be exempt therefrom, as the case may be. On the other hand, counsel for the respondent submits that the Board is without jurisdiction to make such a determination.

This appeal was brought before the Assessment Appeal Board under section 102 of the *Taxation Act*, which defines the powers of the Board, the Court of Revision having refused to change the

assessment roll by deleting the assessment upon the appellant for the timber licences. Subsection (2) thereof reads as follows:

(2) Where an assessed owner is dissatisfied with the decision of a Court of Revision constituted under the *Assessment Equalization Act*, or with the omission or refusal of the Court to hear or determine a complaint with respect to the completed assessment roll, he may appeal therefrom to the Board.

Subsection (6) thereof enacts that "sections 45 to 48, inclusive, of the *Assessment Equalization Act* apply, mutatis mutandis, to an appeal brought under this section."

Sections 46 and 47 of the *Assessment Equalization Act* are relevant. They read as follows:

46. (1) The amount of the assessment of real property appealed against may be varied by the Board where, in the opinion of the Board, either

(a) the value at which an individual parcel under consideration is assessed does not bear 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; or

(b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under section 37.

(2) Where upon appeal the Board finds the assessed values of land and improvements in a municipal corporation or rural area to be in excess of assessed value as determined under section 37, it may order a reassessment by the Commissioner in the municipal corporation or rural area, or a portion thereof, and the reassessment, when approved by the Board, shall, subject to section 51, be binding on the municipal corporation or rural area.

47. Upon an appeal, on any ground with respect to a parcel, from the decision of the Court of Revision, the Board may reopen the whole question of the assessment on that parcel, so that omissions from or errors in the assessment roll may be corrected, and the accurate amount for which the assessment on that parcel should be made and the person who should be assessed therefor may be placed upon the roll by the Board.

The appellant submits that under the above-quoted statutory provisions, particularly sections 46 and 47, the Board is expressly, or by the most compelling implication, entrusted with the responsibility of deciding whether or not the timber licences in question appear on the assessment roll in error or otherwise. The respondent, on the other hand, places reliance upon the decision of the Supreme Court of Canada in *Toronto v. Olympia Edward Recreation Club Ltd.* (1955) 3 D.L.R. 641, which held that it is beyond the power of a Provincial Legislature to vest in Provincially appointed or designated assessment tribunals jurisdiction to determine conclusively or finally the assessability of property to municipal taxation or the liability of a person to such taxation.

In *Re MacMillan, Bloedel et al.* (1961) 36 W.W.R. (N.S.) 463, Wilson, C.J. (as he now is), held that section 47 is not meant to enlarge the specific powers of review given to the Board elsewhere in the Act other than for "the correction of omissions and what might be called mechanical errors."

In *Graham v. City of Vancouver* (No. X668/63) unreported, Lord J. (now J.A.), said of the Assessment Appeal Board: "It is not a Court and cannot decide questions of law."

In *City of Duncan v. District of North Cowichan* (1953) 2 D.L.R. 615, it was held that jurisdiction to decide disputed questions of liability to assessment is vested exclusively in the Supreme Court of

British Columbia and not in bodies having jurisdiction to hear assessment appeals. The Courts of Ontario have repeatedly reached the same conclusion. See *Re Township of Cornwall* (1955) 1 D.L.R. 547 and authorities cited.

In view of the authorities above cited, I am of the opinion that the answer to Question No. 1 must be no, and the question, accordingly, is answered in the negative. To hold otherwise would necessarily entail a finding that the sections of the Acts in question which define the powers of the Assessment Appeal Board are ultra vires of the Provincial Legislature. I do not so find.

In view of the answer given to Question No. 1, it is unnecessary to answer Question No. 2, and I refrain from doing so.