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**NORTHWEST HOLDING SOCIETY**

**v.**

**CORPORATION OF DELTA**

B.C. Court of Appeal

Before: CHIEF JUSTICE H.W. DAVEY

MR. JUSTICE T.G. NORRIS

MR. JUSTICE ANGELO E. BRANCA

June 20, 1967

John R. Lakes for the Appellant

A.K. Thompson for the Corporation of Delta

**Reasons for Judgment of Mr. Justice Norris**

*Per curiam:*

This is an appeal from an order by Dryer, J., of October 18, 1966, whereby he ordered that certain questions in a case stated for his consideration by the Assessment Appeal Board under the *Assessment Equalization Act* should be answered in the affirmative. The questions were as follows:-

"1. Was the Board correct in holding that the subject lands held under lease from the Crown must be assessed as if held in fee pursuant to the provisions of section 335 of the *Municipal Act*, notwithstanding that section 335 may appear to be in conflict with section 338 of the same Act or other provisions of that Act, or of the *Assessment Equalization Act*?

"2. Did the Board correctly apply the decision of this Honourable Court in *Re Lynn Terminals Ltd.*, 44 W.W.R. (N.S.) 604?

"3. The following question is submitted unaltered at the express request of the appellant: Did the Board err in law by construing that the respondent had submitted substantial evidence setting out the price being paid for 'similar lands on assignment of similar leases' where in fact the said evidence referred to prices paid for lands which are freehold and therefore that the Board's ruling is based on no evidence?"

The appeal concerns Questions 1 and 2 only, and is taken in accordance with the provisions of section 51 of the *Assessment Equalization Act*. The appellant is a non-profit society, the members of which are persons who have entered into leases with the Crown as represented by the Minister of Citizenship and Immigration of certain parcels of land on the waterfront at Tsawwassen, within the Municipality of Delta, the parcels of land being described as Lots 24 - 44,

inclusive, on the assessment roll. These lots are within the Tsawwassen Indian Reserve. The leases are for periods of 30 years, the rental prescribed being subject to revision every five years. There is no doubt that the tenure of the members of the society is in every respect a leasehold tenure. The status of the appellant as representing persons affected by the decision of the Board throughout these proceedings is not questioned by the respondent.

The statutory enactments which were discussed before the Court were:-

*Municipal Act, R.S.B.C. 1960, Chapter 255*

330. (1) Land and improvements shall be assessed at their actual value. 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 which such land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of such value. 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.

335. (1) Lands the fee of which is in the Crown, or in some person or organization on behalf of the Crown, but which are held or occupied otherwise than by or on behalf of the Crown are, with the improvements thereon, liable to assessment and taxation in accordance with this section, but this section does not apply to make liable to taxation lands or improvements which would otherwise be exempt from taxation under clauses (b) to (l), inclusive, of subsection (1) of section 327, or under a by-law adopted under section 328, or a highway occupied by a company mentioned in Part XIV.

(2) The lands referred to in subsection (1) with the improvements thereon shall be entered in the assessment roll in the name of the holder or occupier thereof, whose interest shall be assessed at the actual value of the lands and improvements.

(3) Except as provided by or under the *Veterans' Land Act*, the taxes imposed on the lands and improvements referred to in subsection (1) are, subject to subsection (4), a liability only of the holder or occupier thereof, recoverable in the manner set out in this Act, but the said lands and improvements are not liable to tax sale, nor are such taxes a lien or charge on such lands and improvements.

(4) Lands which have been sold, granted, or conveyed by the Crown in right of the Province, and in respect of which the Crown grant has not been registered, are, together with the improvements thereon, liable to tax sale, and the taxes imposed thereon are a lien and charge on such lands and improvements, and all the provisions of this Act as to assessment, taxation, recovery of taxes, and tax sale apply, *mutatis mutandis*.

(5) This section applies, *mutatis mutandis*, to improvements owned by, leased to, held, or occupied by some person other than the Crown, situate on lands the fee of which is in the Crown, or in some person or organization on behalf of the Crown.

(6) This section applies, mutatis mutandis, where land is held in trust for a tribe or band of Indians and occupied, in other than an official capacity, by a person not an Indian.

338. (1) Where any interest in land or improvements other than the ownership of the fee-simple can be assessed within the municipality under the provisions of this or any other Act, the assessed value of the interest shall be the sum which a willing purchaser would be expected to pay to a willing vendor for such interest without including the value of the goodwill of any business connected with such interest.

(2) Any structure, aqueduct, tunnel (except mine-workings), bridge, dam, reservoir, road, storage-tank, transformer, or substation which extends over, under, or through land may be separately assessed to the person owning, leasing, maintaining, operating, or using the same, notwithstanding that the land may be owned by some other person.

*Assessment Equalization Act, R.S.B.C. 1960, Chapter 18*

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.

The appellant's grounds of appeal were as follows:-

1. That the judgment is against the law.
2. That the learned Judge erred in finding that he should follow the decision in *Re Lynn Terminals Limited's Appeal* (1963) 44 W.W.R. (N.S.) 604, so that the lands of the appellant should be assessed as freehold lands when in fact the said lands are leasehold lands.
3. That the learned Judge further erred in law in applying the said Lynn Terminals Limited decision in holding that there was nothing in the Reasons for Judgment in the said case to indicate that it was dependent on the property being commercial or that relates to valuation of the property as a going concern with or without goodwill when it is stated in the said case that the lands of the Lynn Terminals Limited are zoned and used for heavy industrial purposes, and therefore the provision in section 330 of the *Municipal Act* and section 37 of the *Assessment Equalization Act* must apply to the Lynn Terminals Limited land but does not apply to the land which is the subject of this appeal.
4. The learned Judge further erred in law in finding by applying to the Lynn Terminals Limited case aforesaid that he must consider that section 335 of the *Municipal Act* prevails over section 338 of the *Municipal Act*, whereas it is submitted that the said Act can be interpreted so that there is no such ruling necessary, but rather the said sections can be deemed to be read as being consistent, one with the other.

I have given consideration to the substantial arguments addressed to us by both counsel and have considered the authorities cited by the learned trial Judge and by counsel, including *Re Mercer's Appeal* (1961-62) 36 W.W.R. (N.S.) 199, *Re Lynn Terminals Limited's Appeal* (1963) 44 W.W.R. (N.S.) 604, *Re de Sautel's Appeal* (1959) 29 W.W.R. (N.S.) 665. These were all British

Columbia cases, but none of them judgments of this Court. I do not consider it necessary to canvass all the arguments addressed to us on these cases, for in my opinion the appeal is to be determined on the plain wording of section 335, which contains special provisions as follows to meet the very situation which is before us:-

335. . . .

(2) The lands referred to in subsection (1) with the improvements thereon shall be entered in the assessment roll in the name of the holder or occupier thereof, whose interest shall be assessed at the actual value of the lands and improvements.

. . . . .

(6) This section applies, mutatis mutandis, where land is held in trust for a tribe or band of Indians and occupied, in other than an official capacity, by a person not an Indian.

In my opinion it is inescapable that the assessment of the leasehold interests in the Indian lands referred to "at the actual value of the lands and improvements," being substantially the value of the freehold, was an assessment on proper principles, and the appeal must be dismissed.