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THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER

v.

BINNIE CONSTRUCTION LIMITED

Supreme Court of British Columbia (No. X388/67)

Before: MR. JUSTICE P.D. SEATON

Vancouver, June 5, 1967

B.E. Emerson for the jurisdiction
Colin D. McQuarrie, Q.C. for the company

Case Stated by Assessment Appeal Board

1. The lands assessed are industrial lands occupying uplands and adjoining water lots on the north shore of Burrard Inlet in the District of North Vancouver. The description of the lands assessed are as follows: Firstly, District Lot 193, Block D (E.P. 4931) (except Plan 1923), Plan 1332; secondly, District Lot 193, National Harbours Board water-lot leases V-1492 and V-1500.

2. During the year 1966 the assessed owner, R. F. Binnie Construction Ltd., undertook and completed certain works on the lands assessed as follows:

(a) Improvements were made to the uplands by way of construction of a workshop building having a floor area of approximately 28 feet by 40 feet and annex of 10 feet by 30 feet. The height of the said building was 15 feet and that of the annex 8 feet. The construction was of second-hand light steel frame with plywood sheeting and the total cost was \$4,000. The workshop is used for maintenance of company equipment.

(b) Approximately 2 acres of water lot were filled in 1966. The fill was principally obtained from the debris of tunnel construction. The total cost of fill was that of trucking same to site and amounted to approximately \$7,000. The filled 2 acres are a part of the water lot held under National Harbours Board lease V-1500.

The Assessment Appeal Board has withheld its decision with respect to the appeal and has directed, pursuant to subsection (1) of section 51 of the *Assessment Equalization Act* aforesaid, that a case be stated for the opinion of the Supreme Court of British Columbia.

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

"1. Does the construction of the workshop building, being an 'improvement' within the meaning of section 2 of the *Municipal Act*, R.S.B.C. 1960, chapter 255, and amendments, constitute 'a change in the physical characteristics of the land or the improvements' or 'new construction or development thereon or therein' within the meaning of subsection (1) of section 37A of the *Assessment Equalization Act* and amendments thereto? Said subsection was added to the *Assessment Equalization Act*, being chapter 18 of the

Revised Statutes of British Columbia, 1960, by section 3 of the *Statute Law Amendment Act, 1966*, being chapter 45 of the 1966 Statutes. Said subsection reads as follows:

37 A. (1) Notwithstanding the provisions of section 37, the assessed value of land or improvements shall not be increased in any year by more than five per centum of the assessed value of land or improvements in the preceding year unless the increase is attributable to a change in the physical characteristics of the land or the improvements, or to new construction or development thereon or therein, or results from a reassessment ordered by the Commissioner under subsection (2) of section 9.

"2. If the answer to Question 1 is in the affirmative, does the fact that there was such an improvement made during the year 1966 subject

"(1) the improvements to reassessment without regard to the 5-per-cent limitation imposed by said section 37A (1); or

"(2) the land to reassessment without regard to said limitation; or

"(3) the land and improvements to reassessment without regard to said limitation; or

"(4) must any increase in the assessment of improvements beyond 5 per cent be restricted to the assessed value of the new improvement; i.e., the workshop building?

"3. Does the filling of the 2 acres of water lot constitute a 'change in the physical characteristics of the land' or 'new construction or development thereon or therein' within the meaning of the said section?

"4. If the answer to Question 3 is in the affirmative, does the fact that there was such a change or new construction or development made during the year 1966 subject

"(a) the land to reassessment without regard to the 5-per-cent limitation imposed by said section 37A (1); or

"(b) the improvements to reassessment without regard to said limitation; or

"(c) the land and improvements to reassessment without regard to said limitation; or

"(d) must any increase in assessment of land beyond 5 per cent be restricted to the actual increase in assessed value attributable to the 1966 fill?"

Reasons for Judgment

Most of the issues raised are dealt with in *In the Matter of the Assessment Equalization Act, and in the Matter of the Appeal of Assessor for The Corporation of the District of North Vancouver, and in the Matter of L & K Lumber (North Shore) Ltd., and in In the Matter of the Assessment Equalization Act, and in the Matter of the Appeal of the Assessor for The Corporation of the District of North Vancouver, and in the Matter of Vancouver Wharves Ltd.* Reasons were handed down today in the above-mentioned appeals, and I do not intend repeating what was said there.

In this case the assessed owner made improvements on the land by the construction of a small workshop building at a cost of approximately \$4,000. The assessed owner also filled 2 acres of water lot at a cost of approximately \$7,000. While it is recognized that cost and value might be

quite different, the assessments in this case indicate a complete disregard for section 37A (1). The Assessor reassessed the property disregarding the limitation on the grounds that the improvements and fill excluded section 37A (1). I have already expressed the opinion that this section does not justify a complete disregard of its provisions upon their being a change in physical characteristics, new construction, or development, except in so far as the increase is attributable thereto.

The first question is:-

"1. Does the construction of the workshop building, being an 'improvement' within the meaning of section 2 of the *Municipal Act*, R.S.B.C. 1960, chapter 255, and amendments, constitute 'a change in the physical characteristics of the land or the improvements' or 'new construction or development thereon or therein' within the meaning of subsection (1) of section 37A of the *Assessment Equalization Act* and amendments thereto?"

For the reasons expressed in the cases above mentioned, I conclude that the construction of the workshop building constitutes new construction or development thereon or therein within the meaning of the subsection. The answer to Question 1 is, therefore, in the affirmative.

Question 2 is as follows:-

"2. If the answer to Question 1 is in the affirmative, does the fact that there was such an improvement made during the year 1966 subject

"(1) the improvements to reassessment without regard to the 5-per-cent limitation imposed by said section 37A (1); or

"(2) the land to reassessment without regard to said limitation; or

"(3) the land and improvements to reassessment without regard to said limitation;
or

"(4) must any increase in the assessment of improvements beyond 5 per cent be restricted to the assessed value of the new improvement; i.e., the workshop building?"

For reasons already expressed in the above-mentioned cases, I would answer each of these questions in the negative. I am told that sub-questions (1), (3), and (4) of Question 2 do not arise out of this hearing before the Board, but that sub-question (2) is of consequence. It is my opinion that the limitation is applicable to the land and improvements, notwithstanding the answer to Question 1, except in so far as the increase is attributable to causes enumerated in the subsection.

Question 3 is as follows:

"3. Does the filling of the 2 acres of water lot constitute a 'change in the physical characteristics of the land' or 'new construction or development thereon or therein' within the meaning of the said section?"

The meaning of "physical characteristics" and "new construction or development thereon or therein" was dealt with in the decisions above mentioned. Applying that reasoning to this question, it would have to be answered in the affirmative.

Question 4 is as follows:-

"4. If the answer to Question 3 is in the affirmative, does the fact that there was such a change or new construction or development made during the year 1966 subject

"(a) the land to reassessment without regard to the 5-per-cent limitation imposed by said section 37A (1); or

"(b) the improvements to reassessment without regard to said limitation; or

"(c) the land and improvements to reassessment without regard to said limitation; or

"(d) must any increase in assessment of land beyond 5 per cent be restricted to the actual increase in assessed value attributable to the 1966 fill?"

I would answer each of the sub-questions (a), (b), and (c) in the negative, and sub-question (d) in the affirmative for reasons already expressed. In my opinion the 5-per-cent limitation is imposed on any increase other than the increase attributable to the filling of the 2 acres of water lot. Any increase so caused is not limited by the subsection in determining the value of that 2 acres or the lands contiguous thereto.