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THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER

v.

VANCOUVER WHARVES LIMITED

Supreme Court of British Columbia (No. X464/67)

Before: MR. JUSTICE P.D. SEATON

Vancouver, June 5, 1967

B.E. Emerson for the Jurisdiction.
R.I.A. Smith for Vancouver Wharves Limited.

Case Stated by Assessment Appeal Board

1. The lands assessed have an area of 2.6745 acres and lie on the north shore of Burrard Inlet in the District of North Vancouver and may be described as those comprised in National Harbours Board Water Lot Lease V-1540, District Lot 264, Group 1, New Westminster District.

2. The lands assessed are and at all material times have been owned by the National Harbours Board, which is itself exempt from taxation in respect of them.

3. The respondent at all material times was the occupier of the lands under a lease from the National Harbours Board.

4. Up until some time before 1966 the lands were all under water, but at some time before 1966, during the respondent's occupation, a 0.82-acre portion was filled to a level above water, the balance of 1.8545 acres remaining under water.

5. For all years up to and including 1966 the lands were assessed as if they were all under water because the respondent had done much filling of a large amount of adjacent land occupied by it, and neither the appellant nor the respondent noticed that the 0.82-acre portion was actually a part of the lands assessed until early in February, 1967, during a joint informal examination of aerial photographs.

6. The assessment of the lands on the basis that they were all under water cannot be attributed to any failure of the respondent to disclose particulars relating to the property nor to any concealment by the respondent of such particulars.

7. The lands were assessed for 1966 at $8,737, being calculated at the rate of 7½ cents per square foot, which was one-half the market value of each square foot of the portion under water.

8. The assessment roll for the District of North Vancouver was authenticated by the Court of Revision under subsection (2) of section 360 of the *Municipal Act* for the year 1966 on or about February 28, 1966.

9. During the year 1966 the respondent caused a part of the 0.82-acre portion to be levelled with a bulldozer, at a cost of approximately $100, to provide sufficient parking space for about 20 of its employees' cars.

10. The lands were assessed for 1967 at $17,475, being calculated at the rate of 15 cents per square foot, which was one-half the market value of each square foot of the portion under water.

11. The respondent, by its counsel, duly came before the Court of Revision on February 17, 1967, and complained about the assessment of the lands for 1967.

12. At the hearing before the Court of Revision the appellant raised the question of reassessment with respect to the 0.82-acre portion for the first time, and without notice to the respondent, and requested the Court of Revision to increase the assessed value of the lands to $25,937, being calculated at the above-mentioned rate of 15 cents per square foot for the portion under water and at the rate of 50 cents per square foot for the 0.82 acre portion above water, such rates being one-half the market value in each case, but the Court of Revision, without holding a further hearing, altered the assessment for 1967 to $9,173, being equal to $8,737, the assessed value of the whose parcel for 1966, plus 5 per cent.

13. The assessment roll for the District of North Vancouver was authenticated by the Court of Revision under subsection (2) of section 360 of the *Municipal Act* for the year 1967 on or about February 28, 1967.

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, and accordingly the following questions are humbly submitted for the opinion of this Honourable Court:

> "1. Can the Assessment Appeal Board now properly increase the assessment of the lands to reflect the value accruing from the filling of the 0.82-acre portion?
>
> "2. If the answer to Question 1 is 'yes,' can such assessment be made without regard to the limitation imposed by subsection (1) of section 37A?
>
> " 3. If the answer to Question 2 is 'no,' to what extent may the Assessment Appeal Board adjust the assessment for 1967 to reflect the value accruing from the filling of the 0.82-acre portion?
>
> "4. Did the $100 worth of levelling in 1966 subject the lands to assessment for the year 1967 without regard to the 5-per-cent limitation imposed by subsection (1) of section 37A of the *Assessment Equalization Act*?"

Reasons for Judgment

During the year 1966, improvements consisting of industrial buildings, structures, fixtures, and machinery were erected, placed, and affixed on the lands in question at a cost of approximately $1,164,000. These improvements were duly assessed, and no contention arises in this case about the assessment for such improvements. The appeal involves the assessment on the land. The first question is:

> "A. Did the erection, placing, and affixing of the improvements in 1966 constitute 'a change in the physical characteristics of the land' or 'new construction or development thereon or therein' within the meaning of subsection (1) of section 37A of the *Assessment Equalization Act*? "

The facts recited in the case do not reveal any change in the physical characteristics of the land, and I do not think that the Legislature intended any broadening of the word "land" as used in that context. If an extension of that word beyond its usual meaning in the Act were intended, one would have expected to find words such as "real property" used.

On the other hand, it would appear that the provision "new construction or development thereon or therein" involves a much broader concept. It was urged that "construction" related to a change made in the land itself, but I do not think this narrow interpretation to be possible. The word "construction" is defined in Shorter Oxford English Dictionary as "the action of framing, devising, or forming, by the putting together of parts; erection, building." "Construct" includes "to frame, build, erect." In my opinion to place a narrow interpretation on these words would not be in accordance with the principle that words must be construed according to their natural and ordinary meaning. It would involve disregarding the words "thereon or therein," which must have been used to connote something more than construction involving a physical change in the land. In *MacMillan, Bloedel and Powell River Limited* v. *Attorney-General of British Columbia*, B.C. Court of Appeal, June 9, 1966 (unreported), Tysoe, J.A., states:-

> It is trite to say that the cardinal principle applicable to the interpretation of a statute is that words must be construed according to their natural and ordinary meaning, unless there be indications in the context or the circumstances in which the words occur that they are used in a different sense. The intention of the legislature as expressed in the statute governs. It is not open to speculation as to what the Legislature meant but what the language used means, for the intention of the legislature can only be learned from the words it has used.

Approaching the construction of section 37A with those principles in mind, I would have to conclude that the erection, placing, and affixing of the improvements constituted "new construction or development thereon or therein" within the meaning of the section of the *Assessment Equalization Act*. The answer to Question A is, therefore, in the affirmative.

The next question put by the Chairman of the Assessment Appeal Board is:

> "B. If the answer to Question A is 'yes,' does the fact that there was such improvement in 1966 subject the land alone, comprising the first parcel (excepting thereout the two portions sub-leased) and the first supplemental parcel, to reassessment without regard to the five per centum limitation imposed by the said subsection (1) of section 37A?"

The question appears to presume that section 37A (1) either applies so as to bar any increase in excess of 5 per cent or is not applicable to the assessment in any respect. I would conclude that neither presumption is appropriate. I am entitled to consider the intention of the Legislature as learned from the words it has used: see *MacMillan, Bloedel and Powell River Limited* v. *Attorney-General of British Columbia* (*supra*), and see *Astor* v. *Perry, Duncan* v. *Adamson* (1935) A.C. 398, where Lord Macmillan said at page 417:

> So far as the intention of an enactment may be gathered from its own terms it is permissible to have regard to that intention in interpreting it, and if more than one interpretation is possible that interpretation should be adopted which is most consonant with and is best calculated to give effect to the intention of the enactment as so ascertained.

From the words used I would conclude that the Legislature intended the new section to limit increases caused by factors other than those enumerated. This intention was expressed in the key words "unless the increase is attributable to." The Legislature intended to limit increases "unless the increase is attributable to" one of the causes enumerated in the section. One must, therefore, look to the cause of the increase in determining whether or not the 5-per-cent limitation applies. If "the increase" is not attributable to one of the causes enumerated, the assessed value

shall not be increased by more than 5 per cent. If "the increase" is so attributable, the 5-per-cent limitation is not applicable to that increase.

The difficulty in the case as stated is that there were several causes increasing the assessed value and the Assessor has not distinguished between them. In my view, if there is an increase which is attributable to one of the enumerated causes and to other causes not enumerated, it is in essence several increases. In that event the assessment is subject to the limitation, except in so far as any increase is attributable to the causes set out.

This calls on the Assessor to distinguish and apportion the causes of the increase. I recognize that this is a formidable task, but I am not permitted to be concerned about that. The Legislature may take the Assessor's convenience into consideration in its deliberations in making the law, but it is not a proper consideration for me in interpreting the law.

In this case the assessment on the land has increased in excess of 200 per cent, and there is no suggestion that this is due to new construction thereon. It was common ground that the Assessor thought the new construction to completely eliminate the applicability of section 37. I cannot conclude that this interpretation of the section is appropriate.

In my opinion the Assessor is bound by the 5-per-cent limitation, except in so far as the increase is attributable to the new construction thereon. I doubt that an increase could be so attributed, but there may be circumstances arising where such is properly the case, and in my answers I must allow for such circumstance if I am to restrict myself to answering questions of law.

It follows that a negative answer to Question B might be misleading without the qualifications above noted, and I have considered returning the case to the Board for amendment. As the interpretation which I place on the section was fully argued, I think this unnecessary.

The answer to Question B is "no," except in so far as the increase is attributable to new construction or development thereon or therein.

Question C arises out of two circumstances. Firstly, further lands were added to those held by Vancouver Wharves Ltd., and, secondly, the parcels were consolidated in a new lease. The question is stated thus:-

> "C. Did the subdivision in 1966 and the granting of the consolidated lease to the respondent in that year subject the land alone, comprising the first parcel (excepting thereout the two portions sub-leased) and the first supplemental parcel, to reassessment without regard to the five per centum limitation imposed by the said subsection (1) of section 37A?"

In reasons for judgment handed down today 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.*, I held that a mere change in the legal description did not constitute a change in the physical characteristics of the land.

Whether or not subdividing constituted a development therein would be a question of fact with which I could not deal. If raw land were subdivided so as to become residential, it might well constitute a development. Such development might, under certain circumstances, cause an increase in value. In that event the 5-per-cent limitation would not apply to such increase. As I have already said, it does not follow that the land would be wholly freed of the limitation, but would be freed of the limitation in so far as the increase was attributable to the development. I conclude from paragraph 13 of the statement of facts here that the consolidating of the parcels did not constitute a change in the physical characteristics of the land or to new construction or development thereon or therein. It is implicit in the statement of facts that the consolidating for convenience caused no increase in value and, therefore, the 5-per-cent limitation would be

applicable. The simple answer would be that there was no increase attributable to the change in the physical characteristics of the land or to new construction or development thereon or therein. In that event it follows that the limitation applies.

The second aspect of Question C arises out of the fact that additional lands were acquired in the year. In addition to consolidating lands previously held as separate parcels, a new parcel was added.

In my view the addition of the parcel to an existing parcel might constitute a change in the physical characteristics of the land or development therein. For example, if persons held very narrow unusable strips of land and these were consolidated into one parcel, this could constitute a change in the physical characteristics of the land or development therein and there might be an increase in value attributable thereto. In so far as that increase is concerned, the 5-per-cent limitation would not be applicable under section 37A (1).

It is implicit in the case with which we are now dealing that any increase was attributable to an increased value of the lands generally and not to any of the factors recited in section 37A (1). I, therefore, answer Question C in the negative.