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THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER

v.

L & K LUMBER (NORTH SHORE) LIMITED

Supreme Court of British Columbia (Nos. X468/67, X491/67)

Before: MR. JUSTICE P.D. SEATON

Vancouver, June 5, 1967

B.E. Emerson for the appellant jurisdiction
B.W.F. McLoughlin for the respondent company

Case Stated by the Assessment Appeal Board

1. The lands assessed for 1967 are industrial lands comprising lands not under water and the bed and foreshore contiguous thereto on the north shore of Burrard Inlet, in the District of North Vancouver.

2. The person assessed is Vancouver Wharves Limited, lessee of Pacific Great Eastern Railway Company.

3. The lands assessed are lands which Vancouver Wharves Limited has, at all relevant times, leased to L & K Lumber (North Shore) Limited, which last-named company has at all relevant times occupied and used the assessed lands solely for its own business-namely, the operation of the lumber-mill.

4. In the year 1966 the description of the lands assessed on the assessment roll for 1966 was, firstly, a 6.6816-acre portion of Parcel C (Reference Plan 775); secondly, a 7.0552-acre portion of Crown grant (Reference Plan 6243) fronting Parcel C, both in District Lot 264.

5. In the year 1967 the legal description of the lands assessed was "a portion of Lot 2, Plan 12357, of District Lot 264 and the bed and foreshore of Burrard Inlet," and such description appeared on the assessment roll for the year 1967.

6. Up until 1966 Vancouver Wharves Limited leased a portion of Parcel C (Reference Plan 775) and a portion of a Crown grant, filed under Reference Plan 6243, fronting Parcel C from the Pacific Great Eastern Railway Company. During the same year Vancouver Wharves Limited renegotiated their lease with the Pacific Great Eastern Railway Company, which resulted in an increase in the total area leased from Pacific Great Eastern Railway Company by Vancouver Wharves Limited and the filing of a subdivision plan in the appropriate Land Registry Office.

7. As a result of a filing of the new subdivision plan, the legal description of the lands assessed as it appeared on the assessment roll was changed from that indicated in paragraph 4 to that indicated in paragraph 5 of this case.

8. At all relevant times

(a) the area of the lands assessed, as comprised in the sub-lease of L & K Lumber (North Shore) Limited, has remained constant, but the legal description of the lands occupied by L & K Lumber (North Shore) Limited has altered as a result of the said subdivision;

(b) there has not been new construction or development on or in the lands assessed;

(c) there has not been a reassessment of the lands assessed ordered by the Assessment Commissioner, as provided for by the *Assessment Equalization Act* under subsection (2) of section 9 thereof.

9. In 1966 the Assessor for the Municipal District of North Vancouver calculated the assessment of the lands assessed on the basis that there were 6.6816 acres of land not covered by water and 7.0552 acres of bed and foreshore. The assessed value of the lands was in the year 1966 fixed at $103,255.

10. During the year 1966 the said Assessor discovered that the lands assessed comprised 9.6 acres of land not covered with water and the 4.2053 acres of bed and foreshore. On the basis of these acreages, the said Assessor changed the assessment of the assessed lands to $231,985 for the purposes of the 1967 assessment roll.

The Assessment Appeal Board has withheld its decision with respect to the appeal and has directed, pursuant to subsection (2) 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:

"A. Does the change or alteration in the legal description of the lands under assessment constitute 'a change in the physical characteristics of the land. . .' 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:

"37A. (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.

"B. If the answer to Question A is in the affirmative, does the fact that there was a change or alteration in the legal description of the lands under assessment during the year 1966 subject the lands to reassessment without regard to the 5-per-cent limitation imposed by said section 37A (1)?"

Reasons for Judgment

This case was stated by the Chairman of the Assessment Appeal Board pursuant to section 51 (2) of the *Assessment Equalization Act*, R.S.B.C. 1960, chapter 18.

The appellant has also taken certiorari proceedings against the possibility that these proceedings will be found to be inappropriate.

This possibility arises from the language of section 46 of the *Assessment Equalization Act* as amended in 1961. It now reads 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
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> > (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
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> > (b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under section 37.
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> (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.

Section 3 of the Statute Law Amendment Act, 1966, added section 37A to the *Assessment Equalization Act*, 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.
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> (2) Where an assessment under section 37 results in an increase in the assessed value of land or improvements in excess of that permitted under subsection (1) of this section, the Assessor shall set down in his assessment roll the assessed value of the land or improvements in accordance with the limitation imposed by subsection (1) of this section.
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> (3) This section applies to assessment rolls authenticated in 1967 and subsequent years.

The matter being dealt with by the Board on this appeal related to the applicability of section 37A. The appellant has quite properly pointed out its concern that the Board had no jurisdiction to consider that issue. This might follow from a strict reading of section 46 (1) (b) . The suggestion is that the words "under section 37" exclude the Board from considering the matter involved in this appeal.

It is clear that the Board has not the broad jurisdiction of a Court of Revision (see *Re Assessment Equalization Act re Appeal of MacMillan, Bloedel & Powell River Ltd. et al.* (1961-62) 36 W.W.R. 463). In that case Wilson, C.J. (as he now is), also dealt with the applicability of section 47 at page 466:-

> I reject crown counsel's argument that sec. 47 has any relevance to this situation. Sec. 47 is, I think, somewhat equivalent to the slip rule in the Supreme Court Rules and is not meant to enlarge the specific powers of review given to the board by sec. 46 save by providing for the correction of omissions and what might be called mechanical errors. In this connection I refer to *Caven* v. *Ottawa (City)* (1932) O.R. 369.

I do not think that attributing this jurisdiction to the Board would constitute it a court so as to make the legislation *ultra vires*, and I, therefore, think the problem dealt with in *Re Assessment Equalization Act re Taxation Act re Western Forest Industries Ltd.'s Appeal* (1966) 54 W.W.R. 764 not to be analogous.

To hold that the Board is restricted to valuations under section 37 and that it must ignore the presence of section 37A would be inconsistent with the purposes of the Act and would make the application of section 50 ludicrous.

I am entitled to consider whether or not an interpretation results in an absurdity. In *Bishop of Vancouver Island* v. *City of Victoria* (1921) 3 W.W.R. 214 at pages 217-218, Lord Atkinson dealt with some of the considerations applicable in interpreting this Statute:-

> In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense. In *Grey* v. *Pearson*, 6 H.L. Cas. 61, at p. 106, 26 L.J. Ch. 473, Lord Wensleydale said:
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> "I have been long and deeply impressed with the wisdom of the rule now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing titles, and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further."
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> Lord Blackburn quoted this passage with approval in *Caledonian Ry. Co.* v. *North British Ry. Co.*, 6 App. Cas. 122, at p. 131, 29 W.R. 685, as did also Jessel, M.R., in *Ex parte Walton*; *In re Levy*, 17 Ch. D. 756, 50 L.J. Ch. 657, 662. There is another principle in the construction of statutes specially applicable to this section. It is thus stated by Lord Esher in *Reg.* v. *Judge of the City of London Court* (1892) 1 Q.B. 273, at p. 290, 61 L.J.Q.B. 337:-
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> "If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity. The Court has nothing to do with the question whether or not the Legislature committed an absurdity. In my opinion, the rule has always been this-if the words of an Act admit of two interpretations, then they are not clear; and if one interpretation leads to an absurdity, and the other does not, the Court will conclude that the legislature did not intend to lead to an absurdity, and will adopt the other interpretation."
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> And Lord Halsbury in *Cooke* v. *Vogeler Co.* (1901) A.C. 102, at p. 107, (1901) W.N. 2, said:
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> "But a court of law has nothing to do with the reasonableness or unreasonableness of a provision, except so far as it may help them in interpreting what the Legislature has said."
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> Which necessarily means that for this latter purpose it is legitimate to take into consideration the reasonableness or unreasonableness of a provision of a statute. Again a section of a statute should, if possible, be construed so that there may be no repugnancy or inconsistency between its different portions or members.

In my view if the 1966 amendment is recognized as an amendment to section 37, the Board is not called upon to blind itself to the existence of section 37A. I would incline to the view that the reference to section 37 in section 46 must include a reference to section 37 A.

This issue was only raised obliquely in explaining the collateral proceedings and is not raised by the stated case. I do not know whether the jurisdiction of the Board was challenged before or during its hearings. Counsel wished the appeal to be dealt with on its merits. They asked that I

consider this preliminary point so that the certiorari proceedings could be brought on for hearing if I thought the present proceedings were without jurisdiction. I discuss it only with that purpose in mind and not in relation to the stated case. I do not think it either necessary or appropriate for me to give an opinion other than that requested in the stated case as required by section 51.

It follows from what I have said that the certiorari application need not be brought on and will stand dismissed without costs 10 days after the date hereof if no appeal is taken from this decision. If an appeal is taken, the matter of the certiorari proceedings can be spoken to.

The first question on which the Board has requested the opinion of the Court states the narrow issue on which this appeal must turn:

> "Does the change or alteration in the legal description of the lands under assessment constitute 'a change in the physical characteristics of the land. . .' within the meaning of subsection (1) of section 37A of the *Assessment Equalization Act* and amendments thereto?"

Everything about this land has remained constant except its legal description, and the Assessor suggests that this constitutes "a change in the physical characteristics of the land." The word "physical" is defined in the Shorter Oxford English Dictionary as follows: "of or pertaining to material nature; pertaining to or connected with matter; material." The Concise Edition of Webster's New World Dictionary defines "physical" as "of nature and all matter; natural; material," and "of the body as opposed to the mind."

The application of the term "physical" was dealt with by Mowat, J., in *Township of Kenyon* v. *Township of Charlottenburgh* (1922) 53 O.L.R. 22, where the Statute referred to "physical difficulties or obstructions."

Applying that case and the usual use of the term "physical" to the question here, I conclude that the legal description of land is not one of its "physical characteristics" within the meaning of section 37A.

The answer to the first question is in the negative. Under those circumstances I need not deal with the second question. The appellant is entitled to its costs.