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THE ROMAN CATHOLIC ARCHBISHOP OF VANCOUVER

v.

THE CORPORATION OF THE DISTRICT OF SURREY

Supreme Court of British Columbia (No. X898/67)

Before: MR. JUSTICE T.W. BROWN

Vancouver, November 1, 1967

R.H. Stewart for The Roman Catholic Archbishop of Vancouver
A.K. Thompson for The Corporation of the District of Surrey

Reasons for Judgment

November 1, 1967.

I was told by counsel that the same point arises here as in No. X897/67. The appeal is accordingly dismissed with costs; a similar order is made as to the cross-appeal.

SUPREME COURT OF BRITISH COLUMBIA

Before MR. JUSTICE J. G. GOULD.

Vancouver, February 23, 1968.

A. K. Thompson, for The Corporation of the District of Surrey
R. R. Dodd, for The Roman Catholic Archbishop of Vancouver

Reasons for Judgment

This is an appeal by way of case stated by the Assessment Appeal Board, pursuant to section 56 of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, brought against the Roman Catholic Archbishop of Vancouver by the Assessor for the Municipality of Surrey. The facts are set out in the stated case, and in the reasons of the Assessment Appeal Board, dated April 25, 1967. The two questions submitted to the Court are:-

1. Was the Assessment Appeal Board right in holding that the lands in question were entitled to the exemption contained in section 327 (1) (g) of the *Municipal Act*?

"2 Was the Assessment Appeal Board right in finding that the improvements under appeal did not qualify for exemption under section 327 (1) (g) of the *Municipal Act*?"

Exhibit 1 was Order in Council No. 1, dated January 4, 1968, extending the time within which this proceeding may be brought and adjudicated upon, pursuant to section 56 (2) (d) of the *Assessment Equalization Act*.

At the outset of the hearing, counsel for the respondent admitted that the proceedings were in order, and stated that he wished the hearing to go forward on the merits. He had been successful before the Assessment Appeal Board on the issue enunciated in Question 1, but unsuccessful on the issue enunciated in Question 2.

As to Question 1, the Board interpreted "the pertinent legislation" (page 3 of its reasons), and made certain findings of fact, including the following on page 2 of its reasons:-

Evidence on behalf of the appellant was sufficient to indicate that the property under appeal is a part of the cemetery, set aside for cemetery use and developed as an integral part of the cemetery.

I agree with the reasons of the Board in its interpretation of the pertinent legislation, and incorporate by reference the relevant parts of its reasons into this judgment. I have no jurisdiction to review the Board's findings of fact. Consequently, the answer to Question 1 is in the affirmative.

As to Question 2, with great respect I am unable to agree with the Board's decision on this issue, and consequently the answer to that question is in the negative. Reasons follow.

The Board's findings on this issue are included in the last paragraph on page 3 in these words:-

With respect to the appeal of the improvements the *Cemeteries Act* includes any land which is set apart or used as a place for the interment of the dead and includes a mausoleum, but all other improvements are excluded. . . .

The key phrase with which I find myself unable to agree is, "includes a mausoleum, but all other improvements are excluded."

The applicable exemption section in the *Municipal Act* is 327 (1) (g):

327. (1) Except as otherwise provided in this Act, the following property is exempt from taxation to the extent indicated:-

(g) Every cemetery within the meaning of the *Cemeteries Act* actually used and occupied for the interment of the dead or designated as an approved burial area by the Public Utilities Commission.

(See *Municipal Act Amendment Act, 1964*, S.B.C. 1964, chapter 33, section 19 (1))

It is relevant to note that the opening words of each of the categories preceding (g), six in number, are "all land or improvements," thus defining the "property" exempted in subsection 1 of section 327, but the "property" exempted so far as category (g) is concerned is "Every cemetery within the meaning of the *Cemeteries Act*. . ."

Section 2 of the *Municipal Act* excludes improvements from "land" when that word is used in the Act, but includes such when the words "real property" are used.

Set out now is the meaning of the word "cemetery" within the *Cemeteries Act*, R.S.B.C. 1960, chapter 45, section 2:-

"cemetery" means any land which is set apart or used as a place for the interment of the dead or in which human bodies have been buried, and includes a mausoleum;

Land is not defined in the *Cemeteries Act*, but is, of course, in section 24 (u) of the *Interpretation Act*, R.S.B.C. 1960, chapter 199, as follows:-

24. In every Act of the Legislature, unless the context otherwise requires,

(u) "land" includes all messuages, tenements, and hereditaments, houses and buildings of any tenure, unless where there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure,

The Board in my view was of the opinion that there were "words to exclude houses and buildings," except mausoleums in the definition of "cemetery" in the *Cemeteries Act*, because of the phrase "and includes a mausoleum" at the end of the definition. The Board purported to follow the statutory interpretation principle *expressio unius . . . est exclusio alterius*, although it did not specifically refer to it. Herein, in my opinion, lies the error.

The phrase at the end of the definition of cemetery "and includes a mausoleum" is necessary in order that where the repository of human remains is above ground, as distinct from below ground, such repository should be deemed to be a cemetery within the Act. Were the phrase not added, such a repository would clearly not be a cemetery, because the previous words include only places "for the interment of the dead or in which human bodies have been buried." Neither "interment" nor "buried" are anywhere statutorily defined, consequently in interpretation their ordinary usage prevails. The Oxford New English Dictionary (1901) uses as the first definition of the transitive verb to "inter," "to deposit (a corpse) in the earth, or in a grave or tomb; to inhume, bury," and as a first definition of "bury," "to deposit (a corpse) in the ground, in a tomb; to inter." Thus in my view the legislative purpose of the phrase "and includes a mausoleum" is not to exclude from a cemetery within the meaning of the Act any building except a mausoleum; its purpose is to include in a cemetery a repository for human remains above the ground. Were the phrase not included, a mausoleum would be excluded from a cemetery because of the ordinary meaning of "interment" and "buried." It follows that the improvements in question are not excepted from the statutory exemption.

The Assessor is directed to amend his roll accordingly.

The respondent will have his costs.