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CITY OF VANCOUVER

v.

MESSRS. LOWE AND PEERS

Supreme Court of British Columbia (Nos. X181/68 and X203/68)

Before: MR. JUSTICE J.G. RUTTAN

Vancouver, February 29, 1968

C.S.G. Fleming for the appellant
R.I.A. Smith and J.A. Fraser for the respondents

Reasons for Judgment

These are two applications in the form of identical motions that the real property assessment roll prepared for the year 1968 for the purpose of taxation under section 373 of the *Vancouver Charter* has been lawfully and validly prepared.

The question submitted for determination is whether or not in preparing the real-property assessment roll for the purpose of taxation under section 373 of the Charter the Assessor is bound by limitations imposed by the provisions of section 37A of the *Assessment Equalization Act*.

Before considering the significance of section 37A, it is necessary to review the history of statutory enactments which govern the assessment of land in the City of Vancouver.

Part XX of the *Vancouver Charter* is entitled "Real-property Assessments and Taxation." There it is provided the Assessment Commissioner each year shall prepare an assessment roll in which is set down the estimated value of each parcel of land and the improvements thereon. The value to be determined is defined as the actual value in each case. How that actual value is arrived at is set out in section 342 of the Charter in these terms:

> 342. (1) Subject to subsection (3), each parcel entered in the real-property assessment roll shall be estimated at its actual value, the value of improvements being estimated separately from the value of the land to which they are affixed.
>
> (2) In determining the actual value, the Assessment Commissioner 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 identical language in this subsection appears in section 37 (1) of the *Assessment Equalization Act* and the comparable section of the *Municipal Act* (R.S.B.C. 1960, chap. 255, sec. 330 (1)).

Subsection (3) of section 342 provides for the adoption of the method employed by the *Assessment Equalization Act* to arrive at assessed values. It reads as follows:

> (3) Prior to the first day of May in any year, the Council may by by-law provide that for the purposes of this Part the words "actual value" shall be deemed to mean the assessed values of land and improvements determined pursuant to the *Assessment Equalization Act, 1953*.

What is there referred to is the formula laid down in section 37 of the *Assessment Equalization Act* as amended in 1961:

> (3) The assessed value of land and improvements for the purposes of real property taxation under the *Public Schools Act* shall be fifty per centum of the actual value of land and fifty per centum of the actual value of improvements as determined under subsection (1). (Taxation for school purposes in respect of land and improvements under the *Public Schools Act* is, in effect, on fifty per centum of the actual value of land and thirty-seven and one-half per centum of the actual value of improvements.)

In effect, under the *Assessment Equalization Act*, the Assessor would start with the actual value of lands and improvements, following the directions set forth in section 37 (1) of that Act or section 342 (2) of the *Vancouver Charter*. He then takes 50 per cent of this actual value for land purposes, and 37 per cent of the actual value for improvement purposes.

To understand the 37½-per-cent figure taken for improvements, we must refer to section 198 (1) and (2) of the Schools Act which reads:

> 198. (1) All amounts required to meet the annual budget of a Board, other than amounts provided by way of grants from the Province, shall be raised by taxation in the constituent parts of the school district by the municipality or municipalities or the Provincial Collector, or each of them, as the case may be.
>
> (2) Notwithstanding any other Act, all moneys required to be raised for school purposes by taxation in any municipality or portion of a municipality or rural area shall be assessed and levied on the assessed value of land and seventy-five per centum of the assessed value of improvements within the municipality or portion of the municipality or rural area, and every person shall be assessed and taxed on the assessed value of his taxable land and seventy-five per centum of the assessed value of his taxable improvements.

So the value of the improvements for school purposes is 75 per cent of the actual value, and by taking 50 per cent of this school assessment we arrive at the 37½-per-cent figure referred to in that portion of section 37 (3) that appears within the parentheses. It is significant that these two calculations are specifically related to the *Schools Act* and assessment for school purposes.

Prior to 1967 it was mandatory for the Assessor to follow the formula laid down by section 37 of the *Assessment Equalization Act*, for section 342 of the *Vancouver Charter* then read:

> 342. (1) Each parcel entered in the real-property assessment roll shall be estimated at its actual value, the value of the improvements, if any, being estimated separately from the value of the land to which they are affixed.

(2) The words "actual value" used in subsection (1) shall be deemed to mean the assessed values determined pursuant to the provisions of the *Assessment Equalization Act, 1953*.

(3) The provisions of this section shall apply to the assessment roll prepared by the Assessor for the purpose of levying taxes for the year 1962 and shall apply to all subsequent assessment rolls.

In 1966 the *Assessment Equalization Act* was amended by adding as section 37A the following:

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.

(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.

(3) This section applies to assessment rolls authenticated in 1967 and subsequent years.

The effect of section 37A was to prohibit any increase in the assessment of lands or improvements of any municipal lands by more than 5 per cent of the assessed value in the preceding year, even though the real values of land and improvements might be well above their assessed values for the preceding years.

In the year 1967 the assessments followed the same pattern as before, and the formulae laid down by the *Assessment Equalization Act* as varied by section 37A, were carried out, and there was a single valuation for school and for general purposes on one tax roll. However, in that same year there was an amendment to the *Vancouver Charter*, and section 342 was replaced by the present section, to which reference has been made above.

Counsel for the respondents submit the purpose of the *Assessment Equalization Act* is to equalize assessments of all real property in the Province for all taxation purposes, both school and general. They point to the original title on the Act when passed in 1953 which reads as follows: "An Act Respecting Equalization of Assessed Values for Property Taxation Purposes."

There is no doubt the statute is drawn broadly enough so it can be applied to assessments for general as well as school purposes and has in fact been so used in the City of Vancouver from the date when the Act first came into operation. Still the Act is specifically directed only to taxation for school purposes, and there is no mandatory requirement relating to general assessments. So section 8 (5) of the *Assessment Equalization Act* reads in part:

The assessed value of land and improvements as equalized by the Commissioner is binding on the municipal corporation or Provincial Collector for the purposes of real-property taxation only under the *Public Schools Act* by the municipality or rural area in that year, . . .

Moreover, under Part XIII, entitled "General and Regulations," section 53 provides that the returns to be made by the Commissioner each year to the Deputy Minister of Education are to be used by him as subsection (3) says:

> (3) . . . in computing school grants and school cost apportionment between the municipal corporations or portions thereof and rural areas in each school district under the *Public Schools Act*.

Section 55 in the same part discusses conflicts, and provides for the Act to supersede all others where the conflict relates to "real-property assessment for school taxation purposes."

Provisions for appeals from assessments to Courts of Revision and on to the Assessment Appeal Boards as contained in Parts VI and VII and VIII of the *Assessment Equalization Act* have completely superseded any appeal provisions in the other assessment or taxation Statutes. But a distinction is made between appeals on assessments, and appeals from equalization of assessments under sections 7 (c) and 8 of the Act. The former, which are of general application, come first to the Courts of Revision and then on by way of further appeal to the Assessment Appeal Board. The latter form of appeals goes directly to the Assessment Appeal Board pursuant to sections 8 (5) and 31 of the Act.

There is no doubt section 342 (3) of the *Vancouver Charter* was enacted to release the City Assessor from the strictures created by section 37A of the *Assessment Equalization Act* and allow him to return to the procedure set out in the Charter. He is still required to follow the provisions of section 198 of the *Schools Act* (*supra*) and sections 37 and 37A of the *Assessment Equalization Act* in arriving at his assessment for school purposes. For general purposes, in the absence of a by-law under section 342 (3), the Assessor is free to assess at actual value.

The respondents, however, submitted that section 37A of the *Assessment Equalization Act* should be considered as binding and effective without reference to the other sections, in particular section 37 of the Act. But section 37A is tied specifically to assessments carried out pursuant to section 37 and to that extent still binds the school assessments on the rolls. The section is not described as having general application, and to give it such interpretation is to nullify the discretionary effect of section 342 (3) of the Charter. I cannot accept this for it must be presumed the Legislature which passed both enactments intended each to have full force and effect.

It is agreed the assessments, though two or three times greater than last year, do represent fair actual values and I hold, therefore, that the assessment roll is a proper one made within the power granted to the Assessor by the *Vancouver Charter*.