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BRITISH PACIFIC PROPERTIES LTD.

v.

CORPORATION OF THE DISTRICT OF WEST VANCOUVER

Supreme Court of British Columbia (No. X977/68)

Before: MR. JUSTICE P.D. SEATON

Vancouver, November 28, 1968

B.E. Emerson for the Appellant
M.R. Taylor for the Respondent

Reasons for Judgment

In this stated case it is first objected that no questions of law arise for consideration, and it is obvious that I can only consider questions of law. Paragraph 2 of the stated case says

> The Assessment Appeal Board reduced the assessment on 143 of the 402 parcels which were the subject matter of the Appeal before the Board for the reasons given in the decision of the Board dated September 27th, 1968.

I take it that that has the effect of incorporating the reasons for judgment in the stated case and that I am entitled to look at the reasons in determining whether or not a question of law arises.

What the appellant has done is take statements from the reasons, isolate them, and put them in the form of questions to determine whether or not they are wrong.

Question 1 reads:

> "Did the Board err in finding that there was no evidence of market value, income, or present use and that the original cost is irrelevant at this point in time?"

Counsel for the appellant said that the question he wished adjudicated upon was the first half only and he further restricts himself to the market-value issue so that the question may read, in order to isolate the question that the appellant raises,

> "Did the Board err in finding that there was no evidence of market value?"

I think it can be said that that question arises from the stated case. If it did not, I would allow the case to be amended to raise the question. I would incline to the view that where the Board substituted questions it wishes or takes questions the appellant does not wish that I should allow an amendment, or return the stated case for amendment, to insure that the appellant challenges the decision on the grounds that the appellant chooses rather than the grounds that the Board chooses.

In question 1, issue is taken with the statement in the reasons that there is no market evidence. That appears on page 4, where the reasons say,

> The fact is that no other reasonable appraisal approach is possible. There is no market evidence, income or present use, and original cost to the Appellant has become in the light of modern values irrelevant at this point of time. Both parties in this Appeal have adopted the same basic approach, differing mainly in the degree of application.

Reading the reasons as a whole, the Board found that the evidence did not establish market value of similar property and did not warrant that method of evaluation being used. It is apparent that market-value evidence was given and was utilized.

Reading from the reasons at the foot of page 1,

> Both parties approach the valuation of the land on the basis of its future value calculated in the light of the 1967 actual value discounted for the estimated term of years before which development would become economically reasonable and presumably profitable. The parties substantially agreed that the 1967 sales in the Appellant's Chartwell Subdivision offered a starting point for values below the 1,200-foot level. The present values derived from this were discounted by the Respondents in general, at seven percent and by the Appellant's appraiser at ten percent.

It seems to me that what the Board decided was that the evidence was insufficient on which to base a method of evaluation by comparing with sales elsewhere. This is a matter of sufficiency of evidence. Reading the reasons as a whole it is not a matter of the Board's mistakenly thinking there was no evidence, rather, it must mean that the evidence was inadequate upon which to base a market value. Of course, there is no error in law in that because sufficiency of evidence is for the Board.

Looking at question 1 in the context of the stated case and the reasons for judgment, I see no question of law arising and I therefore decline to answer the question.

Question 2 is extremely difficult to understand. It reads thus:

> "Did the Board err in finding that it was not dealing in the appeal before it with a fixed and determinable object of real-property assessment, but with lands presently held with the present firm intention of development for residential purposes when demand makes it economically reasonable?"

The appellant only sought to question the first part of the question and I take the question for my purposes as the question appellant wanted answered, namely, did the Board err in finding that it was not dealing in the appeal before it with a fixed and determinable object of real-property assessment? This observation in the reasons for judgment appears on page 4 after discussing *Sun Life and the City of Montreal* and it is in that context that we must consider this. The Board started in this area by saying,

> The Board is not mindful –

Counsel agree that they must have meant "mindful" I read it;

> The Board is mindful of the many decisions which hold that the assessor must have regard only for the present and not for the past or future.

It continued,

> The facts in this case are somewhat different in that the Board is not dealing with a fixed and determinable object of real property assessment but with land presently held with the present firm intention of development for residential purposes when demand makes it economically reasonable.

It carries on,

> To assert otherwise would be absurd.

And I stop there and confess that I have a great deal of difficulty in trying to determine what it was the Board was saying. Reading the reasons and interpreting as best I can what the Board said, it appears that they were distinguishing say, a building in a built-up area from under-developed land, that they were saying that they were not dealing with land with obvious fixed and easily determined values and that in this case a good deal of judgment required to be exercised.

I see no question of law arising from this observation by the Board. Indeed I can find no interpretation I can put on those words that could raise a question of law. The third question was:

> "Did the Board err in holding that the factors which the Assessor may consider in determining actual value did not specifically include land of the nature of the land which was the subject-matter of the Assessment Appeal before the Board?"

Counsel agreed, and I would conclude whether they agree or not, that the Board can only have meant that the factors commonly considered and specifically enumerated in section 330 of the Municipal Act did not apply to this case: that the nature of the land posed unusual problems to be dealt with under the general factors in section 330. I can see no other interpretation to be put on the words. They appear on page 4 of the reasons, where the Board says,

> The factors which the assessor may consider in determining actual value do not specifically include land of this nature.

I see no question of law arising from that observation or from the question posed, namely, question 3.

I conclude that the questions asked do not raise issues of law and that I am precluded from dealing with them. In any event, reading the reasons, then looking at the questions, it would appear that the statements questioned were not necessary to the decision, were not questions arising in connection with the appeal. I would hesitate to answer questions which are of no consequence, where nothing results other than an answer to a question.

This is an appeal under section 51 (2) of the *Assessment Equalization Act*, but not an interesting academic excursion.

If I were not clearly of the view that no question of law does arise, I would have reserved, but I am satisfied that no question of law can arise on any of these three questions put. I do confess that some of the language employed by the Board was confusing, if not unintelligible. I do not think it necessarily follows that there was error in law, indeed on this appeal it does not appear that the Board was faced with a question of the law on which they had the opportunity to err. I therefore dismiss the appeal.

Do you wish a direction on the matter of costs?

MR. EMERSON: No, I have nothing to raise. I do accept they follow the event, my lord.