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**CHARLES GHIRARDOSI**

**v.**

**CITY OF TRAIL**

Supreme Court of British Columbia (No. 176-G/68)

Before: MR. JUSTICE V.L. DRYER

Rossland, June 11, 1969

D.T. Wetmore for the Respondent
Appellant appeared on his own behalf

**Reasons for Judgment**

The case stated by the Assessment Appeal Board sets out the facts as follows:

> 1. Pursuant to an Order in Council made the 4th day of July, 1961, published in The British Columbia Gazette dated July 13th, 1961, certain portions of amended Blocks 66, 67 and 68 were expropriated for right of way purposes under the *Highway Act*. Certain small portions of these lands were not included in the Order in Council.
>
> 2. Pursuant to the action of the Highway Department an arbitration board was appointed to determine compensation and a submission was made that the Department of Highways had acquired all of amended Lots 66, 67 and 68. The compensation fixed by the arbitration board was set aside by a decision of the Supreme Court of Canada on appeal by the Appellant herein, on March 11, 1966.
>
> 3. On the advice of Counsel the Respondent Assessor had previously removed all of the said lots from the Assessment Roll in full.
>
> 4. In 1968 the Appellant, Ghirardosi, applied to the Court of Revision for restoration of all parcels to the said Assessment Roll. The Court of Revision restored the portions not subject to expropriation.
>
> 5. The Appellant then appealed to this Board to set aside the decision of the Court of Revision, as being made without jurisdiction and to direct the restoration of all parcels of land to the Roll without the exception of any portion.
>
> 6. The Certificate of Title to these lands remains in the name of the Appellant IN TRUST under number 13566-1.

The decision of the Assessment Appeal Board contains, inter alia, the following paragraphs:

> This appeal relates to the decision of the Court of Revision for the City of Trail, which in the exercise of its discretion, restored to the Assessment Roll portions of certain lands

> owned by the Appellant but expropriated in part by the Provincial Government for highway purposes. The facts are that for the purposes of reconstructing a highway, the Government of B.C. elected to expropriate a large portion of the Appellant's land. (Exhibit 6) At the Court of Revision the Appellant requested that his name be re-entered in the Roll. The Court did so, but only as to the unexpropriated portions of the land. There has been some dispute between the Appellant and the Provincial Government with respect to the value of the land expropriated, with the result that the Appellant has not yet been paid. The expropriation has been the subject of extensive litigation in which the Appellant has enjoyed some success.

and later:

> The Board finds the Court of Revision had authority to add the unexpropriated portions of the land to the Roll, but the Board has no jurisdiction to grant the Appellant's demand. If the Board is wrong in this decision, the Supreme Court of British Columbia will put it right.

Prior to the expropriation, the appellant, Charles Ghirardosi, was the owner of all of the land in question.

Mr. Ghirardosi contends that the decision of the Court of Revision interferes in a matter that he says is now before the Supreme Court of British Columbia, in an action numbered X131/64 and styled *Charles Ghirardosi* v. *The Minister of Highways for the Province of British Columbia*. This is the litigation referred to in the decision of the Assessment Appeal Board. There is no merit in this contention. It is not easy to follow Mr. Ghirardosi's submissions, but I suspect that his concern arises from a mistaken belief that the ruling of the Court of Revision awards him ownership of the land referred to in the decision of the Assessment Appeal Board as "the unexpropriated portions" and takes away from him ownership of the expropriated land. In fact, of course, it merely acknowledges that some of his land was expropriated and some was not and says that the unexpropriated portions only should be shown on the tax roll in his name. He says that the whole of his land was expropriated, but in that I am satisfied he is mistaken.

He further, as I understand him, contends that since he applied to have the whole of what was originally his land placed on the tax roll in his name, that application should have been denied *in toto* or granted *in toto*, and that the Court of Revision had no jurisdiction to place part only of the land covered by his application on the tax roll in his name. This contention is not sound in view of section 356 of the *Municipal Act*, chapter 255, R.S.B.C. 1960, and section 40 of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960.

I find that the Court of Revision disposed of this matter correctly. It is not correct to say, however, that the Assessment Appeal Board did not have "jurisdiction to grant the appellant's demand." It would, however, on the. facts, have been wrong in law for it to do so. It follows that the answers to the questions posed in the stated case are as follows:

> *Question 1:* No.
>
> *Question 2:* Yes, but its decision not "to restore the balance of the said parcels to the assessment roll as requested by the appellant" was right.

There is a further matter which must be considered. Counsel for the respondent refers to section 51, subsection (5), of the *Assessment Equalization Act*, chapter 18, R.S.B.C. 1960, and says that in view of its provisions the Court has no jurisdiction to dispose of the stated case. This contention is, I hold, sound. See *Re Merry and City of Trail* (1962) 34 DLR (2d) 594. In this case the provisions of the subsection were not waived. The stated case was filed on December 30, 1968. For this reason, also, therefore, the appeal must fail.

The respondent is entitled to costs.