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Writ of Certiorari

LYNN TERMINALS LIMITED

v.

ASSESSMENT APPEAL BOARD

Supreme Court of British Columbia

Before: MR. JUSTICE R.A.B. WOOTTON (In Chambers)

Vancouver

W.A. Esson, for the Applicants
J.E. Spencer for the Respondent
H.P. Legg for the Attorney-General of British Columbia

Reasons for Judgment May 15, 1972

Motion for a writ of *certiorari* to quash decisions of the Assessment Appeal Board under the *Assessment Equalization Act*, R.S.B.C. 1960, c. 18.

The motion spoken to in detail was that in the present entitled matter, but the result of my decision will have like effect in three other similar matters, they being the decisions of the Board upon the appeals of Vancouver Pile Driving & Contracting Co. Ltd. (No. X-2653), Seaboard Shipping Co. Ltd. (No. X-2654), and Neptune Terminals Ltd. (No. X-2655).

The notice of motion presented is in the following form:

> To: FRED M. PHILPS, Esq., AACI, RI (BC)
> RUSSELL J. G. RICHARDS, Esq.
> G. ROCKWELL, Esq., AACI, RI (BC)
>
> being the members of the Assessment Appeal Board for the Province of British Columbia,
>
> And To: The Honourable The Attorney
> General of the Province of
> British Columbia
>
> And To: Lynn Terminals Ltd.
>
> TAKE NOTICE that the Supreme Court of British Columbia will be moved before the Presiding Judge in Chambers at the Law Courts, in the City of Vancouver, on the 28th day of March, 1972, at 10:30 o'clock in the forenoon or so soon thereafter as counsel can be heard on behalf of the Corporation of the City of North Vancouver and J. D. Jellis, the Assessor of the said Corporation for an order to show cause why the decision of the Assessment Appeal Board in respect of the lands and premises herein referred to which decision bears date December 9, 1971, and notice of which was given to the applicants

herein on December 21, 1971 whereby the Assessment Appeal Board allowed the Appeal of Lynn Terminals Ltd. and reduced the assessment of the said lands and premises for the years 1970 and 1971 should not be removed into this Honourable Court to be quashed upon the following grounds:

1. That the Board exceeded its jurisdiction or acted without jurisdiction by taking into account, and basing its decision upon, facts which were not before it at the hearing of the said appeal and of which the applicants herein, as parties to the said appeal, had no knowledge or means of knowledge and no opportunity to rebut modify or comment upon.

2. That the said Board exceeded its jurisdiction or acted without jurisdiction in purporting to direct the Assessor to determine assessed value by applying to actual value an "assessment-to-market" factor.

3. That the Board exceeded its jurisdiction or acted without jurisdiction in determining and fixing assessment-to-market factors to be applied to the lands in question in the absence of any evidence of what such factors are in respect of industrial lands.

4. That the Board exceeded its jurisdiction or acted without jurisdiction in taking into account the value of properties in other municipalities in determining the correctness and/or equitability of the assessments.

5. The Board exceeded its jurisdiction in refusing to accept, as evidence proper to be considered, the evidence tendered by the Assessor of sales of other land in the municipality and in ruling that the Assessor should have determined values of waterfront lots by a calculation of the cost of filling water lots added to their value as waterlots.

6. And on such other grounds as counsel may advise.

AND TAKE NOTICE that in support of this motion will be read the decision of the Assessment Appeal Board dated December 9, 1971 and the affidavit of John Daniel Jellis sworn the 23rd day of February, 1972 and filed and such further material as counsel may advise and may be filed and such witnesses as may be called to give evidence viva voce.

DATED at Vancouver, British Columbia, this 23rd day of February, 1972.

"C.C.I. Merritt"
Solicitor for the applicants
Corporation of the City of
North Vancouver and John
D. Jellis

As to the jurisdiction of this Court to interfere here by way of the granting of a writ of *certiorari*, I note that there is ample law to support the contention of the applicant that in proper cases this Court may grant a writ of *certiorari* and quash the determination of such a body as the Assessment Appeal Board. The matter, however, must rest in the area of an abuse or excess of jurisdiction.

I refer to the following authority cited by counsel:

Anisminic Ltd. v. *Foreign Compensation Commission*, [1969] 2 A.C. 147. The following is a portion of the judgment of Lord Reid from p. 171 of the report:

> It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except

> in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.

I note within that decision the further pronouncement of Lord Pearce on p. 195 and of Browne, J., at p. 233 of the report, where the latter learned Judge said:

> The supervision by certiorari "goes to two points; one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise": *Rex* v. *Nat Bell Liquors Ltd.* [1922] 2 A.C. 128, 156.

Thus it is not only a want of original jurisdiction that may be fatal to the result of exercise of the jurisdiction. If error has been established of such a nature as indicated in the foregoing judgment, this Court may grant the writ sought here.

The application, in my opinion, must be limited to the grounds raised in the notice of motion. The relevant substance of what the applicant has sworn in his affidavit is to be found in the following extract from that affidavit:

> 7. That at page 3 of the decision appear the words "evidence already indicating that $48,000.00 was a reasonable value for comparable lands elsewhere in the North Shore waterfront and within the same trading or market area". That no evidence was given at the hearing with respect to such lands and that I knew nothing of such land or of the Board's consideration thereof before reading the decision.
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> 8. That some reference was made at the hearing to "assessment-to-market" factors but the only information brought out with respect thereto related solely to commercial and residential properties as distinct from industrial properties such as that involved in the appeal.
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> 9. At page 5 of the decision of the Board in the matter of the appeal of Seaboard Shipping Company Limited it is stated that the Board "has heard concurrently several appeals in respect of upland and waterlot values both in the City and District of North Vancouver. . .". In each of the decisions it is stated that the Board has heard voluminous evidence in respect of upland and waterlot values both in the City and District of North Vancouver. The appeals respecting the City were, I understand, heard before the Board on the day following its hearing of appeals respecting the District and in each case the appeals were heard in the Municipal Hall of the District with, as I understand it, the same counsel and witnesses appearing for certain taxpayers in the District appeals as in the City appeals. But neither I nor anyone else representing me or the City appeared at the District appeals, there was no agreement that the evidence in the District appeals would apply in any way in the City appeals and I had no way of knowing what evidence was given in the District appeals.

I now deal with the question of jurisdiction in so far as it relates to the Assessment Appeal Board. There is no doubt that the Board had jurisdiction to hear the appeal. As to the grounds set forth in the notice of motion, I deal with them seriatim.

The Assessment Appeal Board must have acquired much knowledge in relation to its duty (in part) to equalize assessments by reason of appeals presented to it from time to time. The equalization of assessments is in part its duty. I liken the exercise of its know ledge gained by over-all experience to the exercise of judicial decisions in this Court, very often a matter of accumulated knowledge assisted by relevant evidence. I refer particularly to decisions in damage cases.

As to the particular grounds in the notice of motion, I make the following observations:

1. In the light of the affidavit of the applicant, I find that, if there be error on the part of the Board, there would be much more required to be established than the mere fact of the Board having knowledge of comparable and adjacent parcels in adjoining and other municipal areas. The affidavit of the applicant does not help the Court to conclude that such knowledge was in fact or would be prejudicial to a fair adjudication by the Board.

2. "Purporting to direct the Assessor".

3. "Absence of evidence".

The Board had jurisdiction upon appeal as to part thereof granted by s. 46 of the *Assessment Equalization Act* as amended by 1961, c. 3, s. 6 which reads:

> 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
>
> (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
>
> (b) the assessed values of such land and improvements are in excess of the assessed value as properly determined under section 37.
>
> (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.

What the Board did here, as appears from its decision, was to vary the assessment made by the Assessor. In order to do this, it approached its decision in its own way, as appears clearly demonstrated in its decision where the reasoning for the decision is explained. I am unable to find that it could not lawfully do so or that it fell into fatal error as outlined in the judgments of Lord Pearce and Browne, J., quoted *supra*. In addition, I observe that, when the applicant swore para. 8 of his affidavit he was in fact in error, as a reading of pp. 112 and 115-7 of the transcript (Blue Book) clearly indicates.

4. The Board might lawfully conclude from the over-all knowledge gathered in the course of its duties relevant matters of value, and more particularly in this matter because a parcel involved here was partly within and partly without the jurisdiction of the applicant. That would be the mere application of accumulated knowledge. The applicant has not

demonstrated in his affidavit how it would be unjust for the Board to have so acted. It rested upon the applicant to demonstrate that, in my opinion.

5. It was clearly within the jurisdiction of the Board to accept or reject any particular evidence.

The applicant has not indicated in the material how or why the foregoing alleged errors could or would be prejudicial to the fair and just determination of the Board: *Volkswagen Northern Ltd.* v. *Board of Industrial Relations et al.* (1964),49 W.W.R. 574.

It is unfortunate that, if the applicant was not satisfied that the determination of the Board was a just one, the proper steps by way of appeal to the Court of Appeal were not taken. He had two alternatives, such an appeal or an application by way of stated case, but he exercised neither remedy. I find no error established within the meaning of *Anisminic Ltd.* v. *Foreign Compensation Commission*, *supra*.

In the light of the fact that a full and complete hearing was had by way of appeal before the Board and no good reason appears in the material presented by the applicant, I am of the opinion that the granting of an order for the issuance of a writ of *certiorari* must be refused.

It follows that there is a similar result in the matters X-2653, X-2654, and X-2655, mentioned in the opening of these reasons.

The motion is accordingly dismissed with costs.

Application dismissed.