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## THE SWEDISH CANADIAN REST HOME ASSOCIATION

v.

## B.C. ASSESSMENT AUTHORITY AT BURNABY, BRITISH COLUMBIA

Supreme Court of British Columbia (NO. X7989)

Before: MR. JUSTICE L.G. MCKENZIE

Vancouver, August 25, 1975

J.R. Lakes for the Appellant  
D.G.S. Rae for the Respondent

### Reasons for Judgment

The Assessment Appeal Board states a case in the following terms:

"THIS CASE STATED by the Assessment Appeal Board aforesaid humbly sheweth that the above mentioned appeal was heard at the Corporation of the District of Burnaby in the Province of British Columbia on the 24th day of April 1975 in the presence of John R. Lakes, Esq. of Counsel for the Appellant and the Respondent, R.M. Mercer, Esq. appearing in person.

The facts are as follows:

1. The Appellant, which is a non-profit Society, owns Lot 1, Subdivision 1, Block 10, District Lot 136, Plan 6173 (except North 33') in the Corporation of the District of Burnaby which is 601.2' x 329.4'. The Appellant has built and establishes a rest home for elderly citizens on the said land. The Corporation of the District of Burnaby has exempted a portion of the said land from taxation which includes the land upon which the rest home is situate and land surrounding the said rest home to the extent of a total area of 263' x 329.4' which has remained exempt from taxation up to the assessment on the Appellant's land in 1975.
2. A resolution was passed by the Council of the Corporation of the District of Burnaby on November 18, 1974 that, pursuant to Clause (i) of Subsection (1) of Section 327 of the *Municipal Act* the Council exempted from taxation for the year 1975, 80% of those lands in excess of those lands not covered by buildings as more particularly hereinafter described and set out a description of the land which had been exempted, being 263 x 329.4' as above described. A copy of the resolution and a plan attached thereto is Exhibits 4 and 5 in this appeal.
3. That by letter dated November 28, 1974, which is Exhibit 3 in this appeal, the Corporation aforesaid advised the Appellant of its resolution and that the lands referred to

in its Motion are those excess lands that may be exempted from taxation by Council and not those lands and buildings which are presently exempt from taxation by Statute and setting out the portion of the Appellant's land that had been exempted as the 263' x 329.4' portion referred to in Paragraph 2.

4. In determining the 1975 assessment on the Appellant's land, the Assessor has calculated the portion of the land which had been exempted as above described and upon which the rest home building itself is not situate and by apportioning that land as being 80% exempt and 20% taxable.

5. The Appellant is not disputing the assessed values but the issue is whether the assessment is valid because of the apportionment of 20% of the exempted land as being taxable, as described in Paragraph 4.

WHEREFORE, at the request of THE ASSESSMENT APPEAL BOARD, THE FOLLOWING QUESTIONS ARE HUMBLY SUBMITTED FOR THE OPINION OF THIS HONOURABLE COURT.

1. Did the Assessor err in law by apportioning the land which had been exempt prior to the 1975 assessment excluding the land upon which the rest home itself was situate as being 20% taxable and 80% exempt?

2. Did the Assessor err in law by changing the exemption portion of the Appellant's assessment so that an undivided part of it is 20% taxable and 80% exempt.

DATED at City of Vancouver, in the Province of British Columbia this 17<sup>th</sup> day of JULY 1975.

'J.Y. Gardner'  
FOR THE BOARD"

Counsel for the Assessor for Burnaby takes the preliminary objection that the device of a Stated Case on a matter of law under S.67 of the *Assessment Act* is being improperly used to attack the validity of a resolution of council. The Assessor contends that the taxpayer should have proceeded under ss. 237-243 of the *Municipal Act* in an effort to have the resolution quashed and, having failed to avail itself of that statutory remedy, the taxpayer is out of time because the limitation periods prescribed under those sections have run out. The taxpayer concedes that the time for invoking those sections has indeed run out.

The taxpayer is a non-profit corporation operating a home for elderly citizens. S. 327 of the *Municipal Act* provides:

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

(i) Every building, including the land upon which the building actually stands, constructed or reconstructed with the assistance of aid granted and given by the Province subsequent to the first day of January, 1947, and owned and used exclusively by a non-profit corporation for the purpose of providing homes for elderly citizens, and also such area of the lands surrounding the building as may be determined by the Council:"

Prior to 28 November 1974 Burnaby Council passed a resolution exempting a defined area of land around the building site from taxation.

On 28 November 1974 Council passed a resolution beginning:

"That the Council of The Corporation of the District of Burnaby, pursuant to clause (i) of subsection (1) of Section 327 of the '*Municipal Act*', does hereby exempt from taxation for the year 1975, 80% of those lands in excess of those lands not covered by buildings as more particularly hereinafter described.

CARRIED UNANIMOUSLY

Those lands occupied by the 'SWEDISH CANADIAN REST HOME ASSOCIATION' described as follows: . . . "

There followed a metes and bounds description delineating the whole parcel, including the building site, which had been exempted from taxation by the earlier By-law. or resolution.

For 1975 the Assessor assessed 20% of the whole value of the lands surrounding the building site. He did not delineate what 20% portion was being taxed. He calculated the value for assessment purposes of all the land around the building site (formerly wholly exempted) and then took 20% of this as the assessment.

Mr. Lakes, for the taxpayer, says that the Assessor did not adhere to the authority granted him by the resolution. He says that the *Municipal Act* authorizes Council to exempt ". . . such area of the lands surrounding the building as may be determined by the Council." (My underlining.) Mr. Lakes says that the Assessor, had he lawfully followed the terms of the resolution should have delineated the 80% of the land being exempted or the 20% being taxed. He says that the taxpayer is not attacking the validity of the resolution but the Assessor's application of the resolution. He says the Assessor erred in law and that the taxpayer had a right to complain to the Court of Revision given him by S. 33 (1) (e).

"33. (1) Where a person is of the opinion that an error or omission exists in the completed assessment roll in that. . .

(e) an exemption has been improperly allowed or disallowed, he may. . . make his complaint, etc."

Mr. Lakes says that the taxpayer's exemption was improperly disallowed and this is a matter of law and the proper subject of a Stated Case.

The taxpayer's second argument is that the Assessor erred in not exempting the whole parcel from taxation as in 1974 because of the provisions of S.24 (6) (a) of the *Assessment Act*.

"24. (6) Notwithstanding subsection (1) or anything to the contrary in this Act,

(a) except as provided in paragraphs (b), (c), and (d) and sections 25 and 27, land and improvements shall be assessed at the same value and on the same basis at which the land and improvements were assessed for the calendar year 1974,"

Dealing first with the Preliminary Objection, I find it unnecessary to consider whether or not the resolution is valid because Mr. Lakes repeatedly and emphatically stated that he is not attacking its validity. Neither do I have to consider whether or not the resolution's validity could be questioned on a Stated Case brought outside the limitation periods prescribed by ss. 237-40 of the *Municipal Act*, these being the quashing sections.

I proceed then on the unchallenged assumption that the resolution is valid. The only question of law then remaining is whether or not the Assessor followed the terms of the resolution. I reject the taxpayer's argument that the Assessor should have construed the resolution to oblige him to delineate by metes and bounds the 80% portion being exempted or the 20% portion being taxed, and I find that he followed the terms of the resolution.

With respect to the S. 24 (6) (a) *Municipal Act* argument, I hold that there has been no violation of that "freezing" provision. There is no suggestion that the assessment has not been at the "same value and on the same basis" as 1974. The change has gone only to the issue of exemption from taxation and not to the issue of valuation.

The answer to both questions in the Stated Case is No.

Costs will go to the Assessor of Burnaby.