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CORPORATION OF THE DISTRICT OF BURNABY

v.

THE FINNISH CANADIAN REST HOME ASSOCIATION

Supreme Court of British Columbia (NO. X8595-75)

Before: MR. JUSTICE R.P. ANDERSON

Vancouver, December 10, 1975

W.J. Stirling for the Appellant
J.R. Lakes for the Respondent

Reasons for Judgment

This is an application by way of stated case. The relevant portion of the stated case reads as follows:

"This case stated by the Assessment Appeal Board humbly sheweth that the appeal of The Corporation of the District of Burnaby from the decision of the Court of Revision dated the 28th day of February, 1975 was heard on the 24th day of April in the presence of W.L. Stirling of Counsel for the Appellant and J.L. Lakes of Counsel for the Respondent. The Board stated a case for the opinion of a Supreme Court Judge and the stated case and the order made by Mr. Justice Anderson dated the 5th day of June, 1975 are filed herewith. The hearing of the appeal was continued on the 18th day of September, 1975 in the presence of R.W. Brough of Counsel for the Appellant and J.L. Lakes of Counsel for the Respondent. After hearing arguments, the Board reserved judgment until the 28th day of October, 1975 when it dismissed the appeal and affirmed the decision of the Court of Revision.

The Board found the following facts:

1. The Respondent is the owner of those lands in the Municipality of Burnaby described as Lot 123, District Lot 68, Group 1, Plan 44159, New Westminster District; is a non-profit Corporation which has erected buildings on the said lands which are used exclusively for the purpose of providing homes for elderly citizens; and the said buildings were constructed with the assistance of aid granted and given by the Province after the 31st day of March, 1974.
2. It was agreed by Counsel that the Respondent was not qualified for exemption under section 327(1)(i) of the *Municipal Act*.
3. Council of the Appellant did not pass any by-law or resolution exempting any portion of the Respondent's land and improvements from taxation either under section 327(1)(i) or section 328 (1) (j) of the *Municipal Act*.

4. Council of the Appellant granted for the taxation year 1975 an exemption equal to 80% of the assessed value of all land not occupied by buildings to those non-profit Corporations which qualified for exemption under section 327 (1) (i) of the *Municipal Act*.
5. The Respondent did not and does not dispute the assessed value of its land and improvements but appealed to the Court of Revision on the sole ground that since it had not received the exemptions granted non-profit Corporations qualified under section 327(1) (i) of the *Municipal Act*, it had not received fair and equitable treatment.
6. The Court of Revision allowed the Respondent's appeal and granted it exemption for its buildings and the lands on which its buildings are erected and for 80% of the assessed value of the remainder of its land.
7. It was agreed by Counsel that the Respondent's Rest Home is similar to and provides the same kind of service as other Rest Homes which qualify for exemption under section 327(1) (i) of the *Municipal Act*.

The Board interpreted the order of Mr. Justice Anderson to mean that the Court of Revision did not err in so exempting the Respondent's land and improvements from taxation and, accordingly, upheld the decision of the Court of Revision. .

The Appellant being dissatisfied with the Board's decision as erroneous in point of law has applied to it to state and sign a case setting forth the facts found by it and the ground upon which its decision is questioned, namely, did the Assessment Appeal Board err in law in dismissing the said appeal when the lands and improvements owned by The Finnish Canadian Rest Home Association did not come within section 327(1) (i) of the *Municipal Act* and The Corporation of the District of Burnaby had not passed any by-law or resolution in respect of the said land and improvements pursuant to section 327 (1) (i) and section 328 (1) (j) of the *Municipal Act*."

The case stated on May 16, 1975 reads as follows:

"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 W.L. Sterling (sic) Esq., Counsel for the Appellant, the Corporation of the District of Burnaby, and J.R. Lakes, Esq., Counsel for The Finnish Canadian Rest Home Association, 2288 Harrison Burnaby, B.C.

The facts are as follows:

1. The Appellant's appeal is from the decision of the Court of Revision directing that a portion of the Respondent (sic) land and all of the Respondent's improvements be classified as exempt from taxation. The assessed values of the lands and improvements are not in issue.
2. Counsel for the Appellant did not produce any evidence at the hearing of the appeal before this Board, but did refer to Sections 327 and 328 of the *Municipal Act*, R.S.B.C. 1960 Chapter 255 and Amendments, and alleged that the Court of Revision had no jurisdiction to make the decision to exempt the land and improvements as above described and therefore alleged that the Assessment Appeal Board should declare that all the land and improvements were not exempt.

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 1975 Court of Revision exceed its jurisdiction and therefore err in law by exempting from taxation a portion of the subject land assessment and all of the subject improvement assessment?
2. If the answer to Question 1 is in the affirmative, would the Board have exceeded its jurisdiction and therefore erred in law had it made a decision in the matter without first obtaining the opinion of the Supreme Court?"

My order made on June 5, 1975, reads as follows:

"UPON THE APPLICATION by way of Stated Case of the Assessment Appeal Board dated the 16th of May 1975 and filed in the Vancouver Registry on the 16th of May 1975 AND UPON HEARING W.L. Stirling, Esq., of counsel for the Appellant Corporation of the District of Burnaby and John R. Lakes, Esq., of counsel for the Finnish Canadian Rest Home Association AND UPON READING the said Stated Case;

THIS COURT DOTH ORDER AND ADVISE that the answer to the questions submitted by the said Assessment Appeal Board for the opinion of This Honourable Court are as follows:

1. No, but it is suggested that the Assessment Appeal Board could not determine whether the Court of Revision was correct or not without some evidence before it, and
2. not necessary in view of the answer to Question No. 1."

The Court of Revision had jurisdiction to exempt the subject lands from taxation but the evidence (which was not before me when the earlier stated case was heard) clearly shows that there was no evidence upon which an exemption could be granted. As a consequence, the Assessment Appeal Board erred in law in dismissing the appeal from the Court of Revision "when the lands and improvements owned by The Finnish Canadian Rest Home Association did not come within section 327(1) (i) of the *Municipal Act* and The Corporation of the District of Burnaby did not pass any by-law or resolution in respect of the said land and improvements pursuant to section 327(1) (i) and section 328 (1) (j) of the *Municipal Act*."

Counsel for the respondent argues that the Assessment Appeal Board had no jurisdiction to entertain the appeal and that the Board's jurisdiction was limited to matters of quantum. In my view the Assessment Appeal Board has jurisdiction to hear and determine all appeals from all decisions of the Court of Revision and that the statutory powers of the Board are not limited in the manner suggested by counsel.