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REGINALD R. SAMPSON

v.

SAANICH AND THE ISLANDS ASSESSMENT DISTRICT

British Columbia Court of Appeal

Before: CHIEF JUSTICE J.L. FARRIS, MR. JUSTICE A.E. BRANCA, and MR. JUSTICE P.D. SEATON

Mr. R.R. Sampson, appellant in person
Mr. R.B. Hutchinson, for the respondent

Reasons for Judgment of Mr. Justice Branca

Per curiam May 25, 1977

The original assessment against the lands known as Lot 1, Section 10, Range 2 West, South Saanich District, Plan 26071, was computed under sec. 37A of the *Assessment Equalization Act*.

Sampson, the present respondent, was the owner. The section in question reads as follows:

> 37 A. (1) Notwithstanding the provisions of section 37, the assessed value of land or improvements used for residential purposes or classified as farm land shall not be increased in any year by more than ten per centum of the assessed value of land or improvements used for residential purposes or classified as farm land in the preceding year unless the increase is attributable to a change in the physical characteristics of the land or the improvements, or to new construction or development thereto, thereon, or therein, or results from a reassessment ordered by the Commissioner under subsection (2) of section 9.

Sampson was aggrieved by the decision and appealed it to the Assessment Appeal Board of British Columbia. The assessment was affirmed and the conclusion of the Board, though not unanimous, was that the 1975 decision of the Court of Review was to be confirmed. That was done on the basis that the Board had not during the year 1974 to the month of August 1975, when the decision was rendered, given residential status assessments unless a dwelling of some nature existed on the land or unless the land was considered contiguous.

Sampson then applied for a stated case under the provisions of s. 67 (1) which reads as follows:

> 67. (1) Any person affected by the decision of the board on appeal including a municipality on the resolution of its council, the Minister of Finance, and the Commissioner, has, within twenty-one days of receipt of the decision of the board, the right of appeal to the Supreme Court on a question of law only.

The important finding of the Assessment Appeal Board is set out as follows:

> The opinion of the Board, "though not unanimous" is a majority opinion, that the decision of the 1975 Court of Revision be confirmed. The Board did not, during 1974 and has not up to date, given residential status assessments unless a dwelling of some nature exists on the land or unless the land is considered to be contiguous. The appeal is therefore dismissed.

The questions posed for reply in the stated case are as follows:

> (a) Did the majority of the Board err in holding that Lot I was not being used for residential purposes within the meaning of section 37A (1) of the *Assessment Equalization Act*?
>
> (b) Did the majority of the Board err in holding that property cannot be given residential status assessments unless a dwelling of some nature exists on the land or unless the land is considered to be contiguous?
>
> (c) Was the majority of the Board correct in law in deciding that the assessment be confirmed contrary to the evidence which establishes the existence of assessable improvements which had been omitted from the 1975 assessment roll?

The learned trial judge on the stated case disposed of the matter as follows:

> The Board found that there was no use of the property for residential purposes. It had ignored the fact that the Municipality had zoned the land for residential purposes. It was therefore held for residential purposes. As to use, it could have no other use, that is residential. It was treated as such in fact by the appellant. The appellant had used it for camping with barbecue structure available thereon, a residential purpose, during the year. It has upon it other appurtenances for residential purposes. The ground is cultivated as residential property, viz., as a lawn.
>
> The appellant had applied under a special statute. viz., the *Real Property Tax Deferment Act*, S.B.C. 1974, c. 78, for an adjustment of taxation in anticipation of the actual erection of a dwelling house upon the land.
>
> All the foregoing indicates use of the property for residential purposes.
>
> The suggestion of the appellant was that the property was "contiguous" to residential property. It was adjacent to residential property owned by others, but it was not land contiguous to a holding of the appellant. It is not compulsory for an assessor to make assessment of all improvements.
>
> In the light of the foregoing, I answer the questions raised by the Board as follows:
>
> > (a) Yes.
> >
> > (b) Yes. See the comment above regarding "contiguous."
> >
> > (c) No.
>
> The Board is advised accordingly.

The words used "for residential purposes" is not defined in the Act. The land, however, if it comes within that classification is entitled to an assessment increase limited only to not more than 10% of the valuation of the land or improvements during the preceding year.

The question of what is or is not land or improvements used for residential purposes must depend on the facts and circumstances of each individual case.

Usually if there is a house on the land that should qualify the land for that preferential treatment. But that is not the only test to be applied to a property in order to classify it as a property entitled to residential status assessment.

In the instant case the majority affirmed the finding that the land did not come within the classification because the Board had not, during the year 1974 and to the date of rendering a decision, given residential status assessment if there was no dwelling of some nature on the land or unless the land is considered to be contiguous.

The contiguity of the land in question is not in issue. The real issue is whether or not the Board of Assessment Appeal erred in adopting the test which it did to exclude the property in question from residential status because a dwelling did not exist on the land.

The test applied by the Appeal Board may well bring a piece of land within the classification of residential status assessment. It is, however, not an exclusive test and when applied to the property which is the subject matter of this appeal, it was clearly wrong for the factual reasons rendered by the learned trial judge in his reasons. The learned trial judge may well have overemphasized the importance of zoning as a circumstance, but if the sentence in the first paragraph of his reasons above quoted which reads "It was therefore held for residential purposes." is deleted, I would be and am in substantial agreement with his reasons.

The learned trial judge, except as aforesaid, did not err in his consideration of the case and the answers given are to be affirmed. I would dismiss the appeal and affirm the answers to the question given by the learned trial judge.