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REGINALD R. SAMPSON

v.

SAANICH AND THE ISLANDS ASSESSMENT DISTRICT

Supreme Court of British Columbia (No. 1284/75)

Before: MR. JUSTICE R.A. WOOTTON

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

Reasons for Judgment

The Assessment Appeal Board upheld the decision of the respondent Assessor in his assessment for 1975 of Lot 1, section 10, Range 2 West, South Saanich District, Plan 26071. The decision of the Board, which is a majority decision, is dated the 12th of August, 1975.

The appellant (assessed owner) now appeals to this Court.

The case on appeal is stated as follows:

> "1. On the 12th day of August, 1975, we dismissed an appeal by the Appellant from the 1975 assessment of Lot 1, Section 10, Range 2 West, South Saanich District, Plan 26071.
>
> 2. The Appellant being affected by our said dismissal has required us by written notice to submit a case to the Supreme Court of British Columbia setting forth the facts and the grounds of our determination for the opinion of the said Court.
>
> 3. Now therefore we, the said Board, in compliance with the Appellant's said notice, do hereby state and sign the following case:
>
> *CASE*
>
> 4. The land under assessment is Lot 1, Section 10, Range 2 West, South Saanich District, Plan 26071 and is unoccupied land and is registered in the name of the Appellant, Reginald Robertson Sampson.
>
> 5. Prior to the registration of Plan 26071, the subject property was the southwest half of Lot 6, Block 45, Section 10, Range 2 West, South Saanich District, Plan 1188 and, at that time, formed the major portion of the pleasure garden of the residence known as 7164 Brentwood Drive, Victoria, British Columbia, not owned by the Appellant.
>
> 6. The property is fully landscaped and contains improvements in the form of a stone barbecue and a portion of a concrete and stone stairway located within its boundaries.

There is also a wharf and float similar to other marine facilities along this section of the waterfront. These improvements have been in existence for several years but are not assessed.

7. The land is zoned single family residential in common with surrounding property.

8. The owner was to construct a residence on the property and there was evidence that he had taken advantage of the *Real Property Tax Deferment Act* by which he entered an agreement for the partial deferment of 1974 taxes under the provisions of the said Act. The agreement was dated December 11, 1974 and registered against the property as an encumbrance in the Land Registry Office in Victoria, B.C. under No. RP B81671.

9. The majority of the Assessment Appeal Board found that the property was not used for residential purposes within the meaning of Section 37 A of the *Assessment Equalization Act* but did acknowledge existence of the improvements mentioned in paragraph 6 of the Case.

10. The Appellant having by notice pursuant to Section 67 of the *Assessment Act* required us to submit a case to the Supreme Court of British Columbia, the following questions of law are submitted for the opinion of the Court:

(a) Did the majority of the Board err in holding that Lot 1 was not being used for residential purposes within the meaning of Section 37 A (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?

DATED at Victoria, British Columbia, this 30th day of December, 1975."

The first item to note is that section 61 of the Statute, viz., S.B.C. 1914, c. 6, provides that this appeal must be upon a question of law only.

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. 1914, 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.