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AREA ASSESSOR OF THE COQUITLAM ASSESSMENT AREA

v.

WELDWOOD OF CANADA LTD.

British Columbia Court of Appeal (CA770065)

CORAM:
FARRIS, C.J.B.C.
MACLEAN, J.A.
ROBERTSON, J.A.

Victoria, September 12, 1977

P.W. Klassen, Esq., appearing for the appellant
C.C.I. Merritt, Esq., Q.C., appearing for the respondent

(On an appeal from the decision of Craig, J.S.C.)

FARRIS, C.J.B.C. It will not be necessary to hear you Col. Merritt. I ask my brother Robertson to deliver the first judgment.

ROBERTSON, J.A. (Oral): This is an appeal against a judgment of Mr. Justice Craig as to certain questions raised by way of case stated by the Assessment Appeal Board under section 67 (2) of the *Assessment Act*.

The case turns on section 24 of the *Assessment Act*, the first six subsections of which read as follows:

Valuation for purposes of assessment

> 24. (1) Land and improvements shall be assessed at their actual value.
>
> (2) In determining the actual value for the purposes of subsection (1). the assessor may give consideration to the present use, location, original cost, cost of replacement, revenue or rental value, the price that the land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, and any other circumstances affecting the value, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of those values.
>
> (3) Without limiting the application of subsection (1) and (2), where an industry, commercial undertaking, public utility enterprise, or other operation is carried on, the land and improvements so used shall be valued as the property of a going-concern.

(4) Notwithstanding the provisions of this section, where the assessor receives, on or before the first day of November, from the owner and occupier of land and improvements, a notice in the form prescribed by the commissioner that he owns and occupies the land and improvements as his principal place of residence and has done so since the first day of January 1959, the actual value of the residential land shall, for the purpose of the assessment roll for the succeeding year, be determined under subsection (1), but taking into consideration only the existing residential use of the land, without giving any consideration to the fact that the residential land may have a higher actual value for alternative uses.

(5) Notwithstanding the provisions of this or any other Act, where land and improvements are exempt from taxation, unless ordered by the commissioner. the assessor need not, in respect of those exempt lands and improvements,

(a) assess the land and improvements; or

(b) prepare an annual assessment roll.

(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;

(b) where a change in the value of land and improvements occurs by reason of

(i) a change in the physical characteristics of the land or improvements, or both; or

(ii) new construction or new development thereto, thereon, or therein; or

(iii) a change in the zoning or reclassification of land and improvements

that is not included in the assessment roll for the calendar year 1974, the land and improvements shall be assessed at the same value and on the same basis as if those changes in value had occurred and had been taken into account in the preparation of the assessment roll for the calendar year 1974:

(c) subject to paragraph (b), improvements used for industrial purposes shall be assessed at the same value level and on the same basis at which improvements used for industrial purposes were assessed for the calendar year 1974; and

(d) the percentage utilization of a pipe-line shall continue to be determined under the *Taxation Act*, *Municipal Act*, or *Vancouver Charter,* as the case may be.

The respondent's industrial property in Port Moody was assessed for the year 1974; following that no change occurred to bring into operation paragraph (b) of subsection 6.

Reading from paragraph 10 of the Stated Case these facts appear:

In September 1975 the Assessor, not being satisfied of the fact that the improvements under appeal were in fact assessed at 50 per cent of 1972 actual value, caused Universal Appraisal Co. Ltd. to conduct an appraisal of the structures and machinery comprising the plant.

(I should explain that Port Moody had elected under section 339 of the *Municipal Act* to assess improvements at 50 per cent of the actual value. Nothing turns on that.)

Acting upon his decision the Assessor proceeded as is set out in paragraph 11 of the Stated Case, and I quote:

> "11. The new appraisal completed by 'Universal' provided current replacement value of each of the" said structures and machinery as of September 1975. 'Universal' arrived at the 'current replacement value' as of September 1975 by determining the September 1975 new replacement cost of each and then depreciating each of the structures and machinery to reflect all factors of depreciation relating to the structures and machinery.

The Assessor then:

> (i) converted the aforesaid current replacement value to a December, 1974 level by applying certain factors and arrived at a current replacement value as at December, 1974;
>
> (ii) factored such current replacement value as at December, 1974 to arrive at the current replacement value 1972.

The Assessor then took the current replacement value 1972 as so computed as being the 1972 actual value. He then assessed the 'improvements' at 50 per cent of 1972 actual value, to arrive at the assessed value for 1976 as set out in paragraph 1 hereof."

The question is simply whether the Assessor was justified under paragraph (c) of subsection 6 in making a brand new assessment of the respondent's improvements.

There was of course an appeal to the Assessment Appeal Board and, as I have said, it stated a case under section 67 (2) of the *Assessment Act*, and the questions that it put appear thus at page 6 of the Appeal Book:

> "(1) Did the Assessor err in law in determining the assessment of the "industrial improvements" of the Appellant at its "Plavelle Cedar Mill" in Port Moody for the calendar year 1976 in the manner set out in paragraph 11 hereof?
>
> (2) Does an assessment of the said "industrial improvements" in the manner described in Question 1 bring about in law an assessment in conformity with subsection (c) of subsection (6) of section 24 of the *Assessment Act*, S.B.C. 1974, chapter 6 as amended by the *Assessment Amendment Act 1974*, S.B.C. chapter 105?
>
> (3) What is the meaning of each of the expressions "basis" and "value level" in subsection (6) of section 24 of the said Act?"

Mr. Justice Craig answered the question number 1 "yes" and question number 2 "no" , and in answer to question number 3 he essayed definitions of the word "basis" and the phrase "value level".

The Assessor was dissatisfied with those answers and he brought this appeal.

In my opinion the questions 1 and 2 should be answered as Mr. Justice Craig answered them and the Court should give no answer to number 3. It is no part of the Court's function, as I see it, to supplement a Statute by adding an attempted definition of words in the Statute.

I turn now to a closer examination of section 24. Subsection (1) speaks for itself. Subsection (2) states a number of factors which are to be taken into consideration in arriving at the actual value of land and improvements. Subsection (3) is of some importance here because it relates specifically to the case where an industry, commercial undertaking, public utility enterprise or other operation is carried on, (and here what was carried on was an industry) and provides that in

such case the land and improvements so used shall be valued as the property of a going concern. Subsections (4) and (5) need not be referred to. Subsection (6) of course is the section with which we are particularly concerned, and the first thing I want to refer to is paragraph (c). The approach of the Assessor here was not to be satisfied that the improvements of the respondent had been assessed at the same value level and on the same basis "at which improvements used for industrial purposes were assessed for the calendar year 1974" and to make a new assessment.

It seems to me that the method of comparing the approach to assessment of the respondent's land with the approach to assessment of other lands in the municipality is not one which is open, upon the language of paragraph (c). It says "Improvements used for industrial purposes shall be assessed at the same value level and on the same basis at which improvements used for industrial purposes were assessed for the calendar year 1974", but the respondent's improvements themselves were part of the improvements which were assessed for the calendar year 1974.

If the thing is to be done on a comparative basis then the two things that you compare must be different things and it is not open to compare like with something else which includes the like. All sorts of problems arise if one tries to apply this paragraph as the Assessor applied it. Are you to exclude from your base some properties? If so, which properties? Where are you to draw the line? Is it to be between the properties that the Assessor thinks were properly assessed and the properties that he thinks were not properly assessed? To my mind the approach is simply not one which accords with the language which is used in paragraph (c).

Now what does paragraph (c) mean? Looking at paragraph (a) the principal purpose of the subsection is to freeze the assessments at their 1974 figures. Paragraph (a) however must be read with the other paragraphs but it and those other paragraphs are not mutually exclusive and (b) and (c) do not completely supplant (a). (b) deals with certain kinds of causes of change in value but it is not exhaustive, there are certain types of change which are not valued; and it seems to me that what (c) was designed to do was to take care of one of those causes of change which have not been valued, namely the case where improvements in existence in 1974 were used for some purpose other than an industrial purpose but which later have been converted to being used for an industrial purpose. An example would be a large warehouse which was used for storing furniture by a retail merchant; that warehouse is acquired by somebody else who begins to use it for industrial purposes without making any change in its construction; he might for example bring in fork lifts and various types of machinery which is not affixed to the freehold so that there will be no new construction or new development of the building, but it would from that time be used for industrial purposes. That, it seems to me, is what the Legislature was directing its mind to by paragraph (c).

The expression 'same value level' seems to me to relate to the approach made by the Assessor pursuant to subsections (2) and (3) to the improvements in the municipality that were used for industrial purposes in 1974, and the expression 'same basis' I think refers in this particular case to the assessment of improvements at 50 per cent of their actual value. There may be, in other cases, other instances where 'same basis' is more extensive.

That then is my view of what subsection (6) does comprise and does not comprise and I would dismiss the appeal, except that I would delete the answer to question 3 and leave it unanswered. I think that the respondent is entitled to its costs.

FARRIS, C.J.B.C. I agree.

MACLEAN, J.A. I agree.

FARRIS, C.J.B.C. So ordered.