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SC 105cont Buddenhagen v. Cranbrook Assessment

**RONALD GENE BUDDENHAGEN  
and  
CHRISTINE MARGARE BUDDENHAGEN**

**v.**

**CRANBROOK ASSESSMENT AREA**

British Columbia Court of Appeal Before: CHIEF JUSTICE

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

R.B. Hutchison for the appellant assessor

D.P. Niedermayer the respondents

**Reasons for Judgment of Mr. Justice Seaton**

June 2, 1977

*Per Curiam*

The appeal is from the order of Dryer, J. Quashing an order of the Assessment Appeal Board respecting the assessment of the respondents' land for the year 1974.

We are concerned with the legislation that was in force in 1973.

Section 37A (1) of the *Assessment Equalization Act*, R.S.B.C. 1960, Chap. 18, as amended, provided that assessed values could not be increased more than 10 per cent except under certain circumstances. One of those circumstances, the one that concerns us, is where the increase results from a reassessment ordered by the Commissioner under ss.(2) of s.9. In the order under appeal the learned Chambers Judge concluded that the order by the Commissioner was not an order under s. 9 (2). I set out the two provisions as they read at the time with which we are concerned:

37A. (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 the 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.*

(Italics added)

9. (2) The Commissioner may at any time order the Assessor of a municipal corporation or rural area to carry out a complete reassessment of the land and improvements in his jurisdiction or portion of same, and if the reassessment by the Assessor is not satisfactory in the opinion of the Commissioner, the Commissioner may conduct a complete assessment of land and improvements in such municipal corporation or rural area or

portion of same as he considers necessary for the purpose of securing general uniformity in assessments for real property taxation under the *Public Schools Act*.

The order of the Assessment Commissioner read as follows:

Under Section 9 (2) of the *Assessment Equalization Act*, you are hereby ordered to reassess land in the Cranbrook District within School District No. 2 for entry into the 1974 Assessment Roll. This order is conditional on compliance with Section 37 (2) of the Act and with the objectives determined for School District No. 2 (Cranbrook).

Dryer, J. was of the view that a reassessment of land only as directed by the Commissioner was not "a complete reassessment of the land and improvements in his jurisdiction or portion of same". I agree.

It is argued that this is enabling legislation and that the Commissioner can exercise part or parts of the power that he is given. In my view that argument and all of the other arguments fail because of the very clear word "complete". The Commissioner's authority is to order a complete reassessment. The section does provide that he can limit the reassessment to a portion of the jurisdiction of the assessor but the provision later in the section demonstrates that portion refers to a portion of the area, not the assessment. We have been told about the desirability of a reassessment of the land only, but those submissions ought to have been made to the Legislature. In my view, the words "complete reassessment of the lands and improvements" excluded anything less than a complete reassessment, and a reassessment of land only would have to be characterized as an incomplete reassessment of the land and improvements.

I agree with the primary ground upon which the order under review was granted and need not consider the alternative grounds. I would dismiss the appeal.