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SC 105 Buddenhagen v. Cranbrook Assessment

RONALD GENE BUDDENHAGEN
and
CHRISTINE MARGARE BUDDENHAGEN

v.

CRANBROOK ASSESSMENT AREA

Supreme Court of British Columbia (No. SC69/75)

Before: MR. JUSTICE V.L. DRYER

Cranbrook, November 4, 1975

D. Niedermayer for the Appellants

T.J. Melnick for the Respondent

Reasons for Judgment December 17, 1975

This is an application for a Writ of Certiorari brought by the applicants, Ronald Gene Buddenhagen and Christine Margare Buddenhagen, against the assessor for the Cranbrook Assessment District. Counsel for the respondent takes the preliminary objection that certiorari does not lie here because, he says, the *Assessment Equalization Act*, R.S.B.C., 1960, c. 18, in sections 43 to 52 and particularly in sections 50 and 51, provides a full and complete appeal and the time thereby limited for appeal, twenty-one days, has expired. He relies here on *E. E. Pringle and the Department of Manpower and Immigration* v. *Hugh Hypolite Fraser*, (1972) S.C.R. 821; *British Columbia Securities Commission and Attorney-General of British Columbia* v. *Robertson*, (1974, 2 W.W.R. 165 and *The Queen* v. *Sheward*, (1880), 4 Q.B.D. 179.

The sections mentioned do not provide a "full appeal" and the *Assessment Equalization Act* does not contain words ousting the jurisdiction of this Court in certiorari in any way similar to those considered in the *Pringle* v. *Fraser* and *British Columbia Securities Commission* v. *Robertson* cases. In *The Queen* v. *Sheward* the applicants had, before applying for certiorari, taken other steps inconsistent with the questioning of the decision they wished brought up and quashed on certiorari. There are no similar facts here. The time limited for certiorari under our rules had not expired in the case at bar when these proceedings were started. The preliminary objection is overruled.

I now turn to the main motion. The picture here is confused by the fact that the Assessment Commissioner wrote a number of letters (perhaps amounting to orders) to the assessor for the Cranbrook Assessment District, and presumably to some if not all other assessors, in one of which, namely that of June 20th, 1973, is found the words:

> "Accordingly you are hereby ordered under Section 9 (2) of the Act to reassess for entry into the 1974 Assessment Roll, all land and improvements except those included within the provisions of Section 37-A."

The substance of these words is set out in the Board's order. Section 37 -A (1) reads as follows:

> "*Notwithstanding the provisions of Section 37 the assessed value of land or improvements shall not be increased in any year by more than 10% of the assessed value of land or improvements 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 sub-section 2 of Section 9*."

The italics are, of course, mine.

The finding of the Assessment Appeal Board contains the following statement:

> "Mr. Jacob, the respondent, in reply to the statements made by the appellant informed the Board that on November 14, 1973 an order by the Assessment Commissioner was issued and addressed to Mc. R. D. Whyte, Provincial Assessor, Cranbrook District, which reads as follows: 'Under Section 9 (2) of the *Assessment Equalization Act*, you are hereby ordered to re-assess 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)'."

On December 18th, 1973 the Assessment Commissioner sent a further notice to all assessors which impliedly at least suggests that the directive of June 20th, 1973 was still in effect. This notice is not referred to in the Board's order but it was referred to at the hearing without objection and, in any event, the conclusion I have reached makes reference to it not material, though of course it might be if a different view were taken.

The appellant contends that the Assessment Appeal Board did not consider the conflict between the order of November 14th and the other orders. That may be so but I cannot be sure that it is so. The finding of the Board is not well drawn in this respect, but I do not think I can on that basis alone order the issue of the writ.

The applicant further contends that what was issued by the Assistant Commissioner on November 14th, 1973, does not constitute an order under section 9 (2) of the *Assessment Equalization Act* since it relates only to land and he contends an order under section 9 (2) must direct "a complete re-assessment of the land and improvements in his jurisdiction or portion of same". Counsel for the respondent says that the words "portion of same" modify "land and improvements" and counsel for the applicant says they must modify "jurisdiction". I think, because of the most immediate logical antecedent rule and the presence of the word "complete", I must agree with counsel for the applicant here and hold that the November 14th, 1973 directive was not an order which complied with the requirements of section 9 (2).

There is a further matter to consider. Counsel for the applicant contends that the Board disposed improperly of the applicant's contention that his property was assessed at too high a value in relation to the assessment of similar property in the area. It is asserted by the applicant and not disputed that only one item of evidence showing the assessment of other land in the area was

offered, and it was assessed at $145.00 per acre while the subject property was assessed at $224.00 per acre. From the finding of the Board it would appear that the only other evidence on this question was the opinion of the assessor that "the assessment is fair and equitable". In the contest before the Board, the issue was whether the assessor's opinion was right or wrong. The assessor's opinion that his decision was right is hardly evidence that can be used on that issue. There was, therefore, only one item of evidence before the Board on the issue presented to it under section 46 and that was the item relating to the piece of property presented by the applicant Buddenhagen. The language of the award suggests that the Board considered that particular piece of property to be similar property although it does not specifically say so.

The Board disposes of this issue in the following words:

> "The actual value, other than one comparison not being contested, the Board finds no evidence was presented to justify altering the present assessment."

It is difficult to be sure what the Board was saying here. I have come to the conclusion that a comma must be placed after "comparison" and if so it seems to me that the Board has compared the actual value of the subject property with the assessed value under review whereas section 46 (1) paragraph (a) indicates that what is to be compared is the assessed value of the subject property and the assessed value of similar properties in the area. The Board could have decided not to alter the assessment even if that of similar property was not in line but at least it should first consider the matter and it does not appear to me that it has done so. It failed to deal with the question remitted to it pursuant to section 46 of the Act and decided a question which was not remitted to it.

I therefore conclude that the Board did not consider the matters that it ought to have considered and, in treating the order of November 14th, 1973 as an order made under section 9 (2), made an error of law which appears on the face of the record, and the finding of the Assessment Appeal Board must be quashed.

See *Anisminic* v. *Foreign Compensation Commission*, [1969] 2 A. C. 147 at 171 quoted by Branca, J. A., in *Corporation of City of North Vancouver and Jellis* v. *Philps et al* [1973] 3 W.W.R. 262 at 273.