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ASSESSMENT COMMISSIONER

v.

LYDIA M. HILL

Supreme Court of British Columbia (22/81) Victoria Registry

Before: MR. JUSTICE J.G. RUTTAN

Victoria, January 27, 1981

Peter W. Klassen for the Appellant
The Respondent in person

Reasons for Judgment February 13, 1981

This is an appeal by way of stated case from the decision of the Assessment Appeal Board made on November 28, 1980, concerning a parcel of land located in Surrey assessed under Roll No. 14-36-326-7500-90012-0, and owned by Lydia M. Hill, the respondent herein.

The property is a five-acre parcel which until 1979 was classified as farm land. For the 1980 assessment year, the Assessor removed the land from the farm classification and classified it as residential; the respondent being dissatisfied with the classification appealed it to the Court of Revision. The Court of Revision upheld the Assessor and the respondent appealed this decision to the Assessment Appeal Board.

The Assessment Appeal Board by its decision dated November 28, 1980 found that the lands should be classified as farm on the grounds that the new plants produced each year on this five acres, coupled with the increasing value of the older perennial bushes and trees, all of valuable and exotic species, if converted into dollars would more than satisfy the gross income requirements outlined in sections 2 and 5 of the standards prescribed by the Assessment Commissioner for the classification of land as a farm. Those sections read as follows:

> 2. In order to classify land as a farm, the primary agricultural production on the land by the owner or lessee and sold in either the 12-month period ending November 30 of the year in which the assessment roll was prepared or in the preceding 12-month period must have a gross value of production at farm gate prices of
>
> (a) at least $1,600 on the first 4 ha, . . .
>
> 5. In determining the gross value of the annual production under section 2, the Assessor shall include any unrealized value of primary agricultural production on the land.

The property in question has been maintained through the years as a unique horticultural display farm "providing food for the soul and the mind". To defray expenses, the property is open to the public during May of each year, when plants and shrubs and flowers are in bloom. Gross earnings from admission receipts were $4,416.00 in the year 1978 and $6,000.00 in the year 1979. All receipts were ploughed back into the property. Mrs. Hill quoted this income as more than sufficient to satisfy the gross income requirements of $1,600.00 on the first four hectares (10 acres).

But the Assessor's position is that the property, while being used horticulturally, did not produce any income from the sale of primary agricultural products, and therefore could not qualify for farm status under s. 2.

Mr. and Mrs. Hill admitted they were reluctant to part with any large amount of their shrubs and plants and sold only $60.00 worth in 1979 and $120.00 worth in 1980.

In its decision, the Board said that:

> There is no doubt that the horticulture is included as 'primary agricultural production', under the Commissioner's standards issued pursuant to s. 26 (2) of the *Assessment Act.* There is also little doubt that the new plants produced each year on this 5 acres coupled with the increasing value of the older perennial bushes and trees, all of valuable and exotic species, if converted into dollars would more than satisfy the gross income requirements outlined in section 2 of the Standards. We feel that there is a good case here for the application of section 5 of the Commissioner's Standards for the 1980 Roll. We agree with the Assessment Authority that gate receipts cannot be considered as gross income from the sale of primary agricultural products, but we also feel that had Mrs. Hill not been under a misapprehension in this regard, she would have had little difficulty in achieving $1,600.00 for the year ending November 30th, 1979, from the sale of plants and shrubs, etc.

By their interpretation of s. 5 of the Regulations, the Board seems to hold that mere production of horticultural goods to the monetary value of at least $1,600.00 is sufficient to classify the land as a farm, whether or not the produce is sold.

But by s. 2, to classify the land as a farm, the production from that land must be sold in a twelve-month period. I agree with Mr. Klassen that s. 5 must be read with s. 2 to provide that produce not sold by the end of the 12-month period may be taken into account in arriving at the gross $1,600.00 figure, provided that produce is available and offered for sale.

The mere fact that there has been an increment in horticultural production over the year, is not sufficient to classify the land as farm land, if, as was the case here, there is no intention to sell any of the produce.

I agree that the owner may have the classification changed back to farm merely by selling up to a minimum of $1,600.00 worth of annual produce, but, until she does so, her property remains classified as residential.

Therefore the questions submitted in the stated case are to be answered as follows:

> 1. Was there any evidence on which the Assessment Appeal Board could find that the owner of the subject lands intended to sell any of the bushes, trees and plants grown on the subject lands?
>
> The answer is no.
>
> 2. Was there any evidence on which the Assessment Appeal Board could find that there was any primary agricultural production by the owner of the subject lands within the meaning of sections 2 and 5 of B.C. Regulation 288/79?
>
> The answer is no.
>
> 3. Did the Assessment Appeal Board err in law when it found that the value of bushes, trees and plants which are not intended to be sold at any time by the owner should be

> included in the gross value of production within the meaning of sections 2 and 5 of B.C. Regulation 288/79?
>
> The answer is yes.
>
> 4. Did the Assessment Appeal Board err in law when it found that the subject lands should be classified as farm lands within the meaning of section 28 of the *Assessment Act* and B.C. Regulation 288/79?
>
> The answer is yes.

In its Reasons for Judgment the Board said:

> This property has been inspected by one Member of this Board and he was impressed by the evidence of ongoing horticultural activities still taking place in mid November of this year.

It is apparent that one Board member procured evidence out of the presence and knowledge of the parties, and apparently after the conclusion of the hearing, therefore giving no chance to either party to answer the evidence or be heard in reply.

The Board here was functioning in at least a quasi-judicial capacity: see most recently Bouck, J. *Anardarko Petroleum of Canada Ltd.* v. *Syd Johns Farms Ltd.* (1975) 6 W.W.R. 350 at 355. His Lordship at p. 356 quoted the following headnote from the Alberta decision of *Volkswagen Northern Ltd.* v. *Bd. of Industrial Relations* (1964) 49 W.W.R. 574:

> The reception by a tribunal, exercising judicial or quasi-judicial functions, of additional evidence after the conclusion of a hearing and after counsel representing interested parties have withdrawn, goes to jurisdiction and an order made by the tribunal may be quashed if it appears that the additional evidence had a bearing on the order made.

This further ground of appeal was not raised in the stated case, and it is not now necessary for me to rule on it. But I do remind the Board of its duty to act judicially and to observe the rules of natural justice.

By agreement with Mr. Klassen, there will be no order as to costs.