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ASSESSMENT COMMISSIONER

v.

TEXADA LOGGING LTD.

Supreme Court of British Columbia (81/195) Victoria Registry

Before: MADAM JUSTICE P.M. PROUDFOOT

Victoria, February 25, 1981

J. Greenwood for the appellant
L. Fast for the respondent

Reasons for Judgment March 12, 1981

This matter comes before me by way of stated case. The appellant, the Assessment Commissioner for the Province of British Columbia, appeals from the decision of the Assessment Appeal Board and asks the Court to consider the following questions:

1. Did the Assessment Appeal Board err in law in holding that lands may be classified as tree farm land by an assessor for a year prior to a year in which the assessor receives a tree farm certificate from the Minister of Forests?

2. Did the Assessment Appeal Board err in law in holding that lands may be classified as tree farm land by an assessor for a year during which the assessor receives a tree farm certificate from the Minister of Forests?

The facts are briefly: Texada Logging Ltd. is the owner of certain lands on Saltspring Island, Province of British Columbia. It is these lands which are the subject of this appeal. In November 1977, Texada applied for a tree farm classification under what is now s. 24 of the *Assessment Act*, R.S.B.C. 1979, c. 21.

On May 7, 1979, Texada appeared before the Assessment Appeal Board to appeal the 1979 Court of Revision decision refusing to reclassify the subject lands as a tree farm. This hearing was adjourned from May 7,1979, to September 13, 1979, pending the decision of the Minister of Forests regarding the issuance of a certificate pursuant to s. 24 (2) of the *Assessment Act*.

On May 25, 1979, the chairman of the Assessment Appeal Board asked the Minister to respond to the application of Texada as expediently as possible. The scheduled meeting for September 13, 1979, was adjourned to October 29th and then to November 30, 1979. The matter was still awaiting the pleasure of the Minister of Forests. It was ultimately adjourned sine die. On July 10, 1980, after still no response, the scheduled hearings for the 1979 and 1980 Texada appeals were adjourned. Thereafter what occurred can best be described as a paper chase with the paper all flying in one direction.

Finally on July 24, 1980, the Minister of Forests issued a certificate dated June 10, 1980. The assessor took the position that he could not classify the lands as tree farm prior to the receipt of the certificate. The net result was that he refused to make such classification for 1979 and 1980 on the assessment rolls.

The evidence is that for 1979 and 1980 the utilization of the property had not changed from the date of application for the tree farm classification in 1977.

On appeal by Texada the Board held that the lands should have been classified tree farm as the definition fit the subject property prior to the issuance of the certificate. The classification was applied retroactively, the Board taking the position Texada should not be prejudiced by reason of the tardiness of the Minister of Forests.

Can the assessor classify land as a tree farm without a certificate from the Minister of Forests? Section 24 (2) reads as follows:

> "(2) The application may be approved by the assessor on receipt of a certificate from the Minister of Forests to the effect that the land fits the definition of tree farm land in section 1, and that the plan submitted with the application is designed to ensure that the land will be maintained in a state of continuous productivity."

The company argues that the word "may" gives the assessor a discretion to classify the lands as a tree farm without the certificate. There are two other possible arguments-one that the word "may" could imply that the assessor could refuse to classify the land even after the certificate was issued if some other requirement may not be met, and the other is that, in that section, in reality, the word "may" should actually read "shall".

I do not propose to deal with these latter two possibilities but will deal only with the first one, that being that the assessor "may" classify without a certificate. This interpretation is not correct. The certificate is a requirement and the assessor cannot classify a tree farm without it. Certain sections in the Act add force to this conclusion. Section 30 reads as follows:

> "30. The Minister of Forests, before issuing a certificate required under section 24, may require
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> (a) an examination, at the expense of the applicant, of the land to be certified; and
>
> (b) that all or part of the applicant's land be included in the area covered by the certificate."

Certainly this section contemplates the issue of a certificate as a requirement. The definition section also assists:

> "'farm' means an area of land classified as such by the assessor;"

and

> "'tree farm land' means land having its best economic use under forest crop and on which
>
> (a) there is a stock of young growth in numbers of trees per hectare, not less than the minimum standards established by the Forest Service;
>
> (b) an approved working plan provides a reforestation program designed to establish a growing stock in numbers of trees per hectare, not less than the minimum standards established by the Forest Service;
>
> (c) there is a stock of mature timber that, according to an approved working plan, will be harvested on a sustained yield basis; or
>
> (d) there is any combination of them;"

There is no mention of the assessor in this last definition. The issuance of the certificate is obviously conclusive proof that these special conditions as outlined in that section have been met.

Sections 31 to 33 which I do not propose to go into add weight to the conclusion that the tree farm classification is within the jurisdiction of the Minister of Forests only. Section 31 specifically gives the minister the power to cancel the certificate, and s. 33 sets out an appeal procedure with special rules governing cancellation of that certificate. There is no doubt that the entire management and control of tree farm classifications is within the jurisdiction of the Minister only. This control is maintained by the issuance of the certificate pursuant to s. 24 (2) before the classification of a tree farm licence can be made. The answer to question one is in the affirmative.

To answer the second question it is necessary to examine the powers of the Assessment Appeal Board to vary assessments. Section 69 (1) reads as follows:

> "69. (1) In an appeal under this Act the board has and may exercise with reference to the subject matter of the appeal, all the powers of the Court of Revision, and without restricting the generality of the foregoing, the board may determine, and make an order accordingly,
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> (a) whether or not the land or improvements, or both, have been valued at too high or too low an amount;
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> (b) whether or not land or improvements, or both, have been properly classified;
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> (c) whether or not an exemption has been properly allowed or disallowed;
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> (d) whether or not land or improvements, or both, have been wrongfully entered on or omitted from the assessment roll;
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> (e) whether or not the value at which an individual parcel under consideration is assessed bears a fair and just relation to the value at which similar land and improvements are assessed in the municipality or rural area in which it is situated; and
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> (f) whether or not the commissioner has erred in failing to approve an application for classification of land as a farm under section 28 (1) or in revoking a classification of land as a farm under the regulations."

Section 44 (1) which reads as follows defines the Board's powers:

> "44. (1) The powers of a Court of Revision constituted under this Act are
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> (a) to meet at the dates, times, and places appointed, and to try all complaints delivered to the assessor under this Act;
>
> (b) to investigate the assessment roll and the various assessments made in it, whether complained against or not, and subject to subsection (4), to adjudicate on the assessments and complaints so that the assessments shall be fair and equitable and fairly represent actual values within the municipality or rural area;
>
> (c) to direct amendments to be made in the assessment roll necessary to give effect to its decisions; and
>
> (d) to confirm the assessment roll, either with or without amendment."

Section 39 (1) and (2) establishes the Court of Revision:

> "39. (1) Notwithstanding any other Act, the Lieutenant Governor in Council shall appoint Courts of Revision to hear appeals on assessments of land and improvements in all municipalities and rural areas, and shall set the date, time and the place at which each Court of Revision shall commence its sittings.
>
> (2) Notwithstanding the provisions of subsection (1), the Lieutenant Governor in Council may appoint one or more special Courts of Revision, comprised of persons experienced in agriculture, to hear complaints in respect of the classification, or refusal of classification, of land as a farm."

In the reading of these sections I can find no power in the Assessment Appeal Board to reclassify land and there is no doubt that the Assessment Appeal Board did this by making the certificate apply retroactively to the subject property. There is no doubt that the legislature purposely omitted the problem of an appeal relating to a tree farm classification from these sections. Instead a separate mechanism for issuance und cancellation was set up in ss. 24 and 31 and a special appeal procedure against cancellation in s. 33. Quite obviously the Minister wanted to retain control over the harvest of the natural resource and this was the means of doing it.

In the case of *Re Assessment Equalization Act*, *Re Appeal of MacMillan Bloedel and Powell River Ltd. et al* 36 W.W.R. 463, Wilson, J. said the following at p. 464: "The Board is a statutory creation not to be credited with any powers which are not expressly, or by most compelling implication, entrusted to it".

I find support in these words in that the Act does not give the Board the express power and while I have some sympathy for Texada I am not prepared to infer that the Board had such power to classify retroactively.

It is ultra vires the Assessment Appeal Board to classify the lands as tree farm for 1979 and 1980 prior to the issuance of the Minister's certificate for the purposes of assessment.

Question two is answered in the affirmative.

The appeal is allowed.