ASSESSMENT COMMISSIONER

v.

ROBERT G. McMINN

British Columbia Court of Appeal (CA 27/81) Victoria Registry

Before: MR. JUSTICE P.D. SEATON
MR. JUSTICE A.B.B. CARROTHERS and
MR. JUSTICE J.D. LAMBERT

Vancouver, March 30, 31, 1982

J.E.D. Savage for the Appellant, The Assessment Commissioner of British Columbia
D.H. Gray for the Respondent, Robert Gordon McMinn

Reasons for Judgment of Mr. Justice Lambert (Oral)

March 30, 31, 1982

Coram
LAMBERT, J.A.: This is an appeal to this Court on a real property assessment matter. The property in question consists of three contiguous parcels of land in the Highland District near Victoria at Munns Road and Millstream Road. The three parcels together total 346.69 acres. The evidence that was filed with the case as required by s. 74 of the *Assessment Act* shows that the three parcels had been farmed until 1940. They were purchased about 1955 by Mr. McMinn who has owned them since that time. In 1976 he began a farming operation on the land. That operation included a cattle operation and some chickens. Between that time in 1976 when he began the farming operation and 1979, Mr. McMinn fenced off 139 acres in the middle of the three parcels and overlapping a part, but not all, of each of the parcels. All the cattle and all the chickens were confined to the 139 acres for all of the 1979 calendar year. Indeed the purpose of the fence erected by Mr. McMinn was to confine the cattle and chickens in that way.

Section 28 of the *Assessment Act* deals with the classification of land as a farm and with the assessment consequences of that classification. Under s. 28 (2) and Order in Council 1710 of 21 June 1979, which is now B.C. Regulation 288/79, standards were prescribed by the Assessment Commissioner with the approval of the Lieutenant Governor in Council for the classification of land as a farm. All of those standards are relevant to this appeal but the heart of the matter may be said to lie in s. 7 of the standards which for the purposes of this appeal reads in this way:

> 7. Land may be classified as a farm where it consists of all or part of any. . . group of parcels of land. . . making up a tract of land owned. . . by a person. . . and operated as an integrated farm operation for primary agricultural production.

The Assessor classified the fenced 139 acres as farmland in the assessment for 1980 and he classified the remaining 208 acres approximately as rural land. Mr. McMinn appealed in relation

to the classification of the 208 acres as rural land; but the Assessor's decision was upheld by the Court of Revision. Mr. McMinn appealed again to the Assessment Appeal Board and that Board allowed the appeal. The Assessment Commissioner for British Columbia then asked the Assessment Appeal Board to submit a case for the opinion of a Judge of the Supreme Court of British Columbia in accordance with s. 74 of the *Assessment Act*. That case is limited to a question of law only. Five questions of law or questions that were submitted as if they were questions of law were then set out in a case. That case came before Madam Justice Proudfoot, but either at the beginning of argument or in the course of argument the parties limited the question to be answered under the case by Madam Justice Proudfoot to what was then question number 3 which read in this way:

> Did the Assessment Appeal Board err in law in holding that 'the land in question forms part of an overall integrated farming operation' when there was no evidence that the land outside the fenced area was used in or operated as part of the farm operation at all and there was no evidence that the land was 'integrated' into the farm operation at all.

Madam Justice Proudfoot considered the standards and the decision in *Newcastle City Council* v. *Royal Newcastle Hospital* [1959] A.C. 248, and she decided that the question should be answered in the negative and that the appeal should be dismissed. The Assessment Commissioner brought an appeal from that decision to this Court.

When the appeal first came on for hearing in October of 1981, it came before a division comprised of Mr. Justice McFarlane, Mr. Justice Taggart and Mr. Justice Hinkson. During the course of argument some very substantial difficulties arose both because the question number 3 appeared to contain within itself ambiguities, and also because there was some difficulty about the facts in the stated case itself and their relationship to the question of law and to the evidence. In Reasons for Judgment given orally on 1st October, 1981, Mr. Justice McFarlane gave his opinion that the case ought to be restated and that it should be remitted to the Assessment Appeal Board so that it might be restated. With that opinion Mr. Justice Taggart and Mr. Justice Hinkson agreed and the case was remitted to the Assessment Appeal Board to be restated. The case indeed has been restated and comes before us with some changes in what are headed: FACTS NOT IN DISPUTE, a classification of FACTS FOUND BY THIS BOARD and a RESTATED QUESTION OF LAW in these words:

> Was there any evidence on which the Board could properly hold, as it did, that the land outside the fenced area 'forms part of an overall integrated farm operation'.

During the course of argument counsel for the Assessment Commissioner was asked to clarify our understanding of that question and he confirmed that the question was not whether there was evidence on which a tribunal, properly instructed, could reasonably reach that conclusion; but whether there was any evidence at all that was logically probative of that conclusion. In my view he made that concession entirely properly in view of the fact that the issue is limited to a question of law only. So the question as restated is clearly, in my opinion and as clarified, a question of law only. It is whether there is any evidence at all which is logically probative on the issue that the land outside the fenced area forms part of an overall integrated farm operation.

We were referred to parts of the evidence by counsel for the appellant. I do not propose to dwell on them at length, but Mr. McMinn in the course of his testimony said this:

> But having suggested I meet the productivity requirements, my view is that since the whole three hundred and twenty-one acres is an operating unit, I feel that it should all be classified as farmland.

And at page 21 he said:

> My answers to Mr. Partridge's questions are perfectly straightforward. Yes, the operation at the moment is inside the fenced area but the total area of my land holdings is part of my scheme of farm development and I don't think it's logical to try and do everything at once.

And finally:

Well, there is, for instance, across in this area here, there's quite a nice piece of bottom land with all green grass and so on. Had I realized it was going to come to this, I would have dashed the cows over there to eat something last year.

There is evidence that counsel for the appellant has brought to our attention that could be said in some ways to qualify or contradict that evidence by Mr. McMinn. Even out of Mr. McMinn's own mouth it may be that there is some qualification, but in my opinion the three passages that I have read, and there may well be other similar passages, constitute some evidence that goes to the question as framed in the stated case.

The difficulty of this matter and why perhaps it has had to come back to this Court is that, in my opinion, the real question that the Assessment Commissioner wants to have determined is a mixed question of law and fact. While there are various routes available in trying to state a question in the end none of them can bring this matter to a concluded decision because the true nature of the question that lies at the heart of the issue between Mr. McMinn and the Assessment Commissioner is a question of mixed law and fact. In my opinion the isolated question of law in the restated case must be answered "yes". I would therefore dismiss the appeal.

SEATON, J.A.: I agree.

CARROTHERS, J.A.: I agree.

SEATON, J.A.: The appeal is dismissed.