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CHARLES E. MAY

v.

ASSESSOR OF AREA 13 - DEWDNEY-ALOUETTE

Supreme Court of British Columbia (A813538) Vancouver Registry

Before: MR. JUSTICE W.J. TRAINOR

Vancouver, December 3, 1981

Charles E. May on his own behalf
J.K. Greenwood for the Respondent

Reasons for Judgment of Mr. Justice Trainor

At the request of the appellant the Assessment Appeal Board has stated this case "As to the constitutional validity of classification of land as a farm".

The specific questions asked are:

> 1. Did the Assessment Appeal Board err in law in acting upon the standards set by the Assessment Commissioner and in refusing farm status for the Appellant's property?
>
> 2. Are the standards prescribed by the Assessment Commissioner for classification of land as a farm unconstitutional or ultra vires?

The appellant owns property, the area of which is approximately 10 acres. The classification of his property for the 1980 tax roll was changed from farm to residential. The Assessment Appeal Board's decision upholding the reclassification was appealed by Stated Case to this Court. The appeal was dismissed without written reasons.

The present appeal arises from the decision of the Board that the appellant's property for the 1981 tax roll should not be classified as a farm.

The Interpretation Section of the *Assessment Act* contains the following:

> "Farm" means an area of land classified as such by the assessor.

Another relevant provision of the *Assessment Act* is:

> "28 (1) An owner of land may apply to the commissioner to have all or part of his land classified as a farm and the application shall be made in the form and manner the commissioner prescribes and the commissioner may, subject to this Act, approve the classification of the land as a farm.

(2) The commissioner shall, subject to the approval of the Lieutenant Governor in Council, prescribe standards for classification of land as a farm and the assessor shall classify as a farm land that is in accordance with the standards."

Pursuant to s. 28 (2) standards have been prescribed for the classification of land as a farm. The relevant sections are:

"1. (1) In these standards,

'farm gate price' means the price actually received by the producer from the sales of primary agricultural production. In the absence of receipts, the price used shall be that shown in the farm price schedule issued by the Assessment Commissioner as derived from statistical information compiled by the British Columbia Ministry of Agriculture and Food and the Market Information Service, Agriculture Canada;

'primary agricultural production' means stock raising, poultry raising, egg production, dairying, horticulture, beekeeping, agriculture, fur farming and the growing or raising of a crop referred to in Schedule A but does not include those manufactured derivatives produced from agricultural raw materials. . . .

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, and in addition

(b) an amount equal to 5 per cent of the actual value of the land for farm purposes that exceeds 4 ha."

In classifying land as a farm the legislators have chosen the test of a minimum production quota. If the gross value of production falls below the level set in the prescribed standards, the land cannot be classified as a farm. No doubt that test would seem ludicrous to those farmers whose entire crop has been lost by hail, floods or other natural phenomena. But the point to be made is that it is classification as a farm for the purposes of the *Assessment Act* and not whether it is or is not actually a farm.

The essence of the appellant's submission is that it is *ultra vires* the legislature to impose a minimum production quota. He says:

"A production scheme, similar in principle to the minimum production quota, has, since ancient times, been a device for the efficient management of slaves. The earliest and most widely known description of production quotas being administered is recorded in Exodus c.5 verses 6,7,8 & 18.

Production quotas, planned production and work-norms are commonly used devices for controlling and increasing production on the farms and in the factories of the world's dictatorships."

If a landowner wishes to have his property classified as a farm for the purposes of taxation, he is obliged to meet the standard established. If he produces up to the standard he can claim classification as a farm. If he fails to produce up to the standard, either through choice or misfortune, he cannot make that claim.

In either case the basic character of the property remains the same. What is clearly a farm in the view of the ordinary man may not be classified for taxation purposes as a farm because of a failure to meet the standard. Establishment of a set of standards for taxation purposes does not impose a quota. No minimum production quota has been imposed. Those standards are simply a means of establishing classifications for taxation purposes and consequently are within the competence of the legislature.

The case stated indicates that there was no evidence that the minimum standards of production had been met. In answer to the first question I am of the opinion that the Assessment Appeal Board did not err in acting upon the standard set and in refusing farm status for the appellant's property.

As I have already indicated the answer to the second question is that I am of the opinion that the standards prescribed are within the competence of the legislature.

Although there is some merit in the Respondent's application for costs, I believe that in the particular circumstances they should be denied.