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B.C. FRUIT PACKERS CO-OPERATIVE, NARAMATA CO-OP GROWERS EXCHANGE, ASSESSOR OF AREA 17 - PENTICTON

v.

ASSESSOR OF AREA 17 – PENTICTON AND LEADER POTATO ASSOCIATION LTD.

British Columbia Court of Appeal (CA00009083) Vancouver Registry

Before MR. JUSTICE SEATON, MR. JUSTICE HUTCHEON, and MR. JUSTICE WALLACE

Vancouver, February 2, 1989

John R. Lakes for the Appellants
G.E. McDannold for the Respondents

Reasons for Judgment of Mr. Justice Seaton February 2, 1989

This case raises the same issue as was raised in *Leader Potato Association Ltd.* v. *Assessor of Area #17 - Penticton* (1986), 5 B.C.L.R.(2d) 327. In *Leader* this Court agreed with the Court of Revision and the Assessment Appeal Board that land owned by Leader Potato Association Ltd., on which there was a building where the potatoes grown by its four shareholders on nearby lands were graded, sorted, stored and packed, was farmland for assessment purposes. The question is whether the *Leader* decision is applicable to the land on which the appellant co-operatives' packing houses are situate, notwithstanding s. 5.1 of the regulations governing farmland (B.C. Reg. 219/86).

Leader was decided on August 15, 1986. On September 24, 1986 this provision was added to the regulations:

> 5.1 Notwithstanding this regulation, primary agricultural production includes the cleaning, sorting, grading, packing or storage of it, but only if
>
> (a) the title to the land on which the primary agricultural production occurs and the title to the land on which the cleaning, sorting, grading, packing or storing occurs is held solely by the same legal person, and
>
> (b) any authority having jurisdiction over the use of the land on which the production is cleaned, sorted, graded, packed or stored has not regulated the land for a use which would prevent primary agricultural production.

In the cases before us the title is held by the co-operatives, and the fruit and vegetables that are processed in the packing houses are grown by members of the co-operatives.

Three overlapping questions were posed in the stated case:

> 1. Did the Assessment Appeal Board err in law by finding that the standards for classification of land as "Farm" under section 28 (2) of the *Assessment Act*, as interpreted by the Court of Appeal in its decision in *Assessor of Area #17 - Penticton* v. *Leader Potato Association* is not now applicable to the assessment roll prepared in 1986 for the purpose of taxation for 1987 because of the addition of section 5.1 (a) in B.C. Regulation 298/85 as amended by B.C. Regulation 219/86?
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> 2. Did the amendment of standards for classification of land under B.C. Regulation 298/85 by the addition of section 5.1 under B.C. Regulation 219/86 alter the definition of "primary agricultural production" so as to preclude the land which is the subject of this appeal from being classified as Farm under the standards referred to in section 28 of the *Assessment Act* and therefore under the said section 28 of the *Assessment Act*?
>
> 3. Does the ownership of the land which is the subject of this appeal by a co-operative or company rather than the owner of the land upon which produce is grown, prevent the land from being classified as a Farm under B.C. Regulation 298/85 as amended by B.C. Regulation 219/86 and also under section 28 of the *Assessment Act* even though all the shares of the co- operative or company are held by the farmers who do grow the produce on their own land?

The chambers judge, affirming the Assessment Appeal Board, answered the second and third questions in the affirmative. I am of the same view, and see no need to re-examine questions that were examined as fully and carefully as these questions were examined by the Board and the chambers judge.

I break the first question into two parts and dispose of the first by saying that I agree with the Board and the chambers judge that *Leader* is made inapplicable by s. 5.1.

The second part of question #1, whether the reasoning in the *Leader* case is made inapplicable to the assessment roll prepared in 1986 for taxation for 1987, is more difficult.

Section 2 (1) of the *Assessment Act*, R.S.B.C. 1979, c.21, establishes the assessor's primary duty:

> 2. (1) The assessor shall, not later than September 30, 1984 and September 30 in each even numbered year after that, complete a new assessment roll in which he shall set down each property liable to assessment within the municipality or rural area and give to every person named in the assessment roll a notice of assessment, and in each case the roll so completed shall, subject to this Act, be the assessment roll for the purpose of taxation during the 2 following calendar years.

I note that the roll may be completed anytime before September 30th.

I have already said that the effective date of the addition to the regulations of s. 5.1 was September 24, 1986. That brings it between July 1, 1986 and September 30, 1986, two key dates in setting the roll for 1987. The definition of "actual value" found in s. 26 of the *Assessment Act* demonstrates the importance of those dates:

> "actual value" means the actual value that land and improvements would have had on July 1 had they and all other land and improvements been on July 1 in the state and condition that they are in on September 30 and had their use and permitted use been on July 1 the same as they are on September 30;

In more recent amendments, not applicable to this case, the words "in the physical condition" have been substituted for the words "in the state and condition".

Parts of s. 28 of the *Assessment Act* also bear on this question:

> (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.
>
> (3) Land classified by the assessor as a farm shall, while so classified, be valued at its actual value as a farm, without regard to its value for other purposes.

Section 5.1 was made pursuant to s. 28 (2).

The Board disposed of this question in this way:

> *Is section 5.1 of B.C. Regulation 298/85 effective in law for the 1987 Assessment Roll?*
>
> By section 2 of the *Assessment Act*, the assessor, not later than September 30th, in an even year, shall prepare a new assessment roll which will take effect on January 1st of the following year.
>
> Regarding the lands owned by the packing houses, therefore, notwithstanding the valuation date is July 1, 1986, the assessor, in preparing his roll, is bound by the regulation in effect at the date he sets the roll.
>
> There is no question that B.C. Regulation 298/85 (as amended) applies to all property to which an application is made for classification as Farm for the 1987 Roll (see section 2 of the B.C. Reg. 298/85).
>
> By September 30, 1986, the amendment to B.C. Reg. 298/85 (the new section 5.1) had been approved by the Lieutenant Governor in Council.
>
> It is the opinion of the Board that this belated section does apply to lands owned by the packing houses for the 1987 Assessment Roll and they can only be classed as Farm if the owners are in compliance with the requirements set out in section 5.1 of B.C. Regulation 298/85.

The chambers judge answered the question this way:

> Thus it will be seen that this section sets July 1st as the valuation date, but, by definition of actual value, September 30th is the date for determining the state and condition and the use and permitted use of the lands which have to be assessed.
>
> I agree with counsel for the respondent that the actual value is the value on July 1st which the land would have had under the circumstances that existed on September 30th. Both amendments were made prior to September 30th, 1985 and 1986 respectively. As a result, regulation 298/85 as amended by 219/86, is applicable for the purposes of taxation during the 1987 and subsequent calendar years as provided for by regulation 298/85.

On July 1st this land was properly classified as farm. That set the method of valuation on that date. The power of the commissioner was to prescribe standards for classification and he did

that, but he did not and I think could not do more than that. Specifically, he could not and did not back date the classification to July 1st. So this land was properly classified at July 1st as farmland and its value properly arrived at on that basis.

I read the definition of actual value to mean the value on July 1st changed to recognize any change in the state or condition of the land or its use or permitted use that has taken place by September 30th. The fact that the definition prescribes that the state, condition, use and permitted use on September 30th are to be considered suggests that other factors are not to be taken into account as they were on September 30th, but as they were on July 1st. The fact that use and permitted use are spelled out separately suggests that they are not within the term "state and condition" as it is used in this definition; that suggests that the term was not to encompass all circumstances relating to the land.

I am of the view that classification, which is only a means of calculating actual value, is not a "state or condition". The land was exactly the same on September 30th as it was July 1st. Its use and permitted use were the same. It was in the same state and condition. All that was changed was the method of valuation.

I conclude that the regulation made on September 24, 1986 does not apply to the assessment roll prepared in 1986 for the purpose of taxation for 1987.

I would answer each of the questions in the affirmative.