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SCHATROPH, ALEXANDER

v.

ASSESSOR OF AREA 4 - NANAIMO-COWICHAN

Supreme Court of British Columbia (A873558) Vancouver Registry

Before Mr. Justice Spencer (in chambers)

Vancouver, January 26, 1988

Appellant appeared in person
D.O. Marley for the respondent

Reasons for Judgment January 28, 1988

The appellant brings a Stated Case to challenge the decision of the Assessment Appeal Board which sustained the 1987 assessment of five lots located near Clo-ose Bay on the west coast of Vancouver Island. Nine questions were raised in the stated case. The background of facts shows that the appellant acquired the lots over a period of time, some before and some after the federal and provincial governments announced an intention to designate the area in which they lie as a national park. In 1976, to pave the way for that designation, the municipality rezoned the area as P-1, for institutional use only. Apparently the appellant did not know of that rezoning until 1986 and his assessment notices continue to show all five properties as residential. It is conceded that their highest and best use is for residential purposes, but that because of the zoning that use is not permitted. Because of that fact, and because the properties now lie within a designated national park, the appellant has found it impossible to dispose of any of them by private sale.

The method of valuation adopted by the appraiser and sustained by the Assessment Appeal Board was to compare the properties to four other sales in the general area each of which was made to the federal government. The assessor then adjusted those sales values upwards apparently because of the better location and size of the subject properties.

By reserving judgment I have had an opportunity to inspect the whole of the appellants file and to understand the background of the matter, particularly by reference to the reasons for judgment of Mr. Justice Wallace, as he then was, in *Schatroph v. Her Majesty the Queen in Right of the Province of British Columbia,* (unreported) Vancouver Registry 873558, February 4, 1987. It may be, and it was unnecessary to decide in that case or in the proceedings before me, that the 1976 rezoning if the property amounted to a constructive expropriation. If it did, and I pass no opinion on that question, these are not the proceedings in which anything can be done about it. I can deal only with the nine questions raised by the stated case. My answers to them are as follows:

Question 1

This is a question of law. In my opinion the Appeal Board made no error. In arriving at a value for assessment purposes they were not required to consider the law as set out in *Gagetown Lumber co. Ltd. v. Her Majesty The Queen* [1957] S.C.R. 44. In that case the Court was dealing with the proper value to be put on the appellant's land which had been expropriated. Locke J., speaking for the majority, rejected a report of valuation which looked only to the value which a prospective purchaser might have placed on the freehold lands. He made the point that market value is to be determined as between a willing purchaser and a willing vendor. If, as in the present case, the purchaser has a power of expropriation the price might well be depressed by a Vendor's fear that if he does not sell he will be expropriated in any event. But in my opinion, although a power of expropriation, such as the Crown had over the four sales which were used as comparable to arrive at a valuation for the subject lots, may depress their true value it can serve as an indicator of their minimum value. That is at least what they are worth. In this case the appellant does not seek to show the values of his lots for sale purposes, including the present value of their future potential, but instead seeks to show their immediate value for assessment purposes. It was not an error for the Board to consider the possibly depressed price paid for the four comparable properties since that must represent at least their value. There was no suggestion made to me that the Crown as purchaser was under any compulsion to buy. Indeed, Mr. Schatroph suggested the opposite, that the had been told that the Crown would not expropriate but would wait out the owners of properties within the park until they had no choice but to sell. In the special circumstances of this case where there were no other comparable sales available and where there is no general market for these lots, it is my opinion that the Assessment Appeal Board was correct in law at looking at the four sales indiction of value. The fact that the Board made reference to and quoted form *Sun Life Assurance Company of Canada v. City of Montreal*, [1950] S.C.R. 220, shows it was alive to the requirements that, for assessment purposes, only the present value of the property as of the assessment date should be considered.

Question 2.

In my opinion the Board did not err in not considering the case *Rodenbush v. District of North Cowichan* (19770, 76 D.L.R. (3d) 731. That was a case in which Ruttan, J. pointed out that a zoning change which precludes all practical use of a property may amount to a constructive expropriation and express the value of the property. That is not relevant to these proceedings where the comparable properties relied upon were all subject to the same restrictive zoning as are the subject lots.

Question 3

This may be question of law if it involves the improper rejection of evidence. In my opinion, however, it is irrelevant to this case because whatever are the restrictions on the appellants lots the comparable properties were subject to the same restrictions. It was thus fair to use them as a starting point to find the value of the subject lots.

Question 4

In my opinion the Board was not wrong in making a reference to the decision of Mr. Justice Wallace (*supra*) even though that decision was under appeal. An appealed case stands as authority for its proposition until it is overruled. Only the second reference cited by the Board at page 3 of its reasons is challenged by the appellant in this case, and that has to do with whether or not a building permit could be granted to the appellant for these lots. Whatever the true state of affairs is, the four comparable properties are subject to the said rights and restrictions as are the subject lots.

Question 5

In my opinion the Board made no error of law by focusing on the future use of the property. The Board reference to the *Sun Life Assurance* case (*supra*) shows they are alive to their task of looking only at present value.

Question 6

This question is unclear. It reads,

"Was the Appeal Board in error in ascertaining that the Assessor used normal methods in reaching the land values?"

The Assessor used comparable land sales. As a matter of law that is a permissible method of assessment. If the question challenges the particular method selected, that is an issue of fact which is not referable to this Court by a stated case.

Question 7

In my opinion the Appeal Board was not in error in not considering the passages in Rogers, "Canadian Law of Planning and Zoning", at Section 5-14, to which I was referred by the appellant. The passages have to do with the unlawfulness of a constructive expropriation effected by a rezoning which destroyed the utility of land. That is not the subject matter of his inquiry. The comparable properties considered by the Board were subject to the same defect and therefore appropriate to be considered in arriving at the value of the appellant's lots.

Questions 8 and 9

In my opinion the Board made no errors of law if it failed to consider letters from the building inspector and the former planner which advised of building restrictions to which the appellants lots are subject. That is because the comparable properties were subject to the said restrictions. No matter how badly one lot may be restricted its price may properly be shown by comparison to another lot equally restricted.

It follows, notwithstanding the succinct and able presentation made by the appellant on his own behalf, that the Assessment Appeal Board made no errors of law and his application must be dismissed with costs to the respondent.