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GORDON N. BISHOP

v.

ASSESSOR OF AREA 08 - NORTH SHORE/SQUAMISH VALLEY

Supreme Court of British Columbia (A982048) Vancouver Registry

Before the HONOURABLE MR. JUSTICE TAYLOR (in chambers)

Vancouver, September 3, 1998

Gordon N. Bishop Appearing On His Own Behalf
G. Holeksa for the Respondent

Reasons for Judgment (Oral)

September 3, 1998

THE COURT: Mr. Bishop appeals by way of a Stated Case, a decision of the Assessment Appeal Board, made the 30th of June of 1998, by which --

MR. BISHOP: Actually, I'm a little deaf.

THE COURT: All right, I'll speak up. Mr. Bishop appeals by way of a Stated Case, a decision of the Assessment Appeal Board, made June 30th, 1998, by which a single member panel confirmed the decision made by the Court of Revision upholding assessments made of Mr. Bishop's land on Gambier Island. As noted in the Assessment Appeal Board reasons, at page 2, the issue before it and earlier before the Court of Revision was:

"What was the actual market value of the residential portion of the land, and what value was to be attributed to improvements."

Mr. Bishop is the owner of a 35 acre parcel of land on the east shore of Gambier Island. Under the *Forest Land Reserve Act* Mr. Bishop applied for and had classified his land as a private forest reserve. That is evidenced by a letter dated the 7th of March of 1996, a letter that I might add is technically not admissible on this appeal, as it was not part of the evidentiary record before the Assessment Appeal Board. Be that as it may, there seems to be no issue with respect to that factual matter.

Under the *Assessment Act* the Assessor assessed Mr. Bishop's land as being part managed forest land, and part residential, being classifications seven and one, under the *Assessment Act*. Mr. Bishop has a small shack or structure on the property, and photos of it were before the Assessment Appeal Board, as was the appraisal relied upon by the Assessor, the Court of Revision as well. The Assessor, whose assessment was upheld, was that 3.95 acres of this parcel were residential, and the balance, 31.05 acres, were a managed forest. In its summary of the evidence, the decision of the Assessment Appeal Board, page 3 observes:

"Exhibit Number 1 outlines Mr. Bishop's submissions to the board, wherein he states that his only complaint is with the assessed value of the residential portion of the property."

A review of that decision, given that there is no transcript of the proceedings before the Assessment Appeal Board, despite Mr. Bishop's having been invited by counsel for the Assessor to obtain it, reveals that there was no issue as to classification, only value. Mr. Bishop provided no figures to counter the evidence given on behalf of the Assessor, other than four assessments for 1997 for other properties in the area.

Mr. Bishop set forth 18 questions that form part of the Stated Case. Most of those questions involve questions of fact or procedure. Examples of these are questions 1, 5, 6, 8 and 9. He does, however, raise questions of law in some of the questions, examples of which are 3, 15 and 16. The questions are poorly stated, but in essence can be combined into a single question being: Did the Assessment Appeal Board err in assessing Mr. Bishop's land as part managed forest and part recreational land when under the *Forest Land Reserve Act* the Forest Commission had designated the land as a forest reserve?

The question of jurisdiction of this court on such an appeal is succinctly stated by Madam Justice Southin, as she then was, in *Crown Forest Industries Ltd. v. The Assessor of Area 06 - Courtenay*, [1985] 210 BCAC 1191, and from which I quote:

"Under the British Columbia statute this court has no power to substitute its opinion on questions of fact for those of the board.

So long as the Assessment Appeal Board which must in deciding appeals to it, apply the Act, does not:

- 1) misinterpret or misapply the section;
- 2) misapply any applicable principles of general law; or
- 3) act without any evidence or upon a view of the facts which could not reasonably be entertained.

this Court has no power to intervene."

The difficulty for the questions of fact and procedure raised on the Stated Case is that they are simply not matters to be considered by this court, unless they fall within the exceptions outlined by Madam Justice Southin.

The difficulty with respect to the questions of law purported raised to the Stated Case which I have sought to express under a compendium form of question is that that question of law was never before the Assessment Appeal Board, and as a consequence, that Board, and more importantly the Assessor, has never had an opportunity to express itself on that issue, at least insofar as Mr. Bishop is concerned.

The Stated Case portion not drafted by Mr. Bishop is set out at page 1 and 2 of the Stated Case. The Assessment Appeal Board is obliged to state a case in terms of the often multitude of questions put to it by unrepresented Appellants. It has no authority to edit those questions.

At page 2, paragraph 3, the Assessment Appeal Board again clearly restates the issue before itself: "(b) the issue ... was the determination of actual value for the residential portion of the property." In my view, issues of classification are not part of this Stated Case. If Mr. Bishop wishes to raise the relationship of the *Forest Land Reserve Act* and the *Assessment Act*, he must do so properly. That requires him to raise the issue squarely before at least the Assessment Appeal Board in its hearing *de novo*, a matter which he has not so far done.

As tempting as it might be to venture into that question, I am of the view that no opinion should be expressed until Mr. Bishop and the Assessor have had an opportunity to raise that matter at least before the Assessment Appeal Board. If unsatisfied with the decision of the Assessment Appeal Board in respect of that, then Mr. Bishop would be in a position to raise that issue for consideration by this court on a properly Stated Case. Mr. Bishop may wish to seek advice on the relationship of the *Forest Land Reserve Act* classification and the *Assessment Act*, classification, and whether they are mutually exclusive before seeking to raise the issue. That is up to him.

For the foregoing reasons, the appeal is dismissed. The questions of fact and procedure set forth in the Stated Case I decline to answer as they are not properly questions for consideration by this court. On the questions of law, in my view, those questions are not properly stated before this court, and should not be answered. Accordingly, I decline to do so.

(SUBMISSIONS RE COSTS)

THE COURT: Mr. Bishop is no neophyte to the Appellant process. He had an appeal dismissed by Mr. Justice Meredith in 1996 during which it was pointed out to him by the Court the difficulty of appealing on questions of fact. This matter is slightly different, but it seems to me that part of the problem in the Stated Case is Mr. Bishop still does not understand the distinction between questions of law and questions of fact. I accept that he may not have the means to retain counsel to argue his appeal, but much of this issue, in my opinion, and I do not judge the question of the relationship between the two acts by saying this, may be resolved by him getting some good legal advice. I am of the view that Mr. Bishop should be made aware that such ill-considered appeals cannot be made with impunity, there is a consequence and as Mr. Holeksa as counsel for the Assessor observed, there is a cost to the Assessor or the Assessment Appeal Board, generally the taxpayers as a result of such ill-considered appeals.

The Assessor is entitled to costs as a successful party. Rather than involve the process of taxation, I am going to set those costs in the amount of \$200. They are payable forthwith upon entry of the order.

COUNSEL: And that would be inclusive of disbursements, my lord?

THE COURT: How much are the disbursements, we didn't discuss that?

COUNSEL: It's easier if it's inclusive of disbursements, my lord.

THE COURT: All right. It's nominal, as you appreciate, Mr. Holeksa.

COUNSEL: Yes.

THE COURT: That will be inclusive of all disbursements. Thank you. You will draw the order, Mr. Holeksa?

COUNSEL: Yes, I will, my lord.

THE COURT: You may dispense with Mr. Bishop's approval, but you will provide to him a copy of the order.

COUNSEL: Mr. Bishop approved the order last year with no problem, so I am not asking for that.

THE COURT: Mr. Bishop, Mr. Holeksa will draw the order, and will provide a copy to you for your approval. If you approve of the form of the order, it doesn't mean to say that you agree with the

judgment, but if you approve of the form of the order I have made, you should endorse it and return it to him, all right. Costs will be payable after that.

MR. BISHOP: I can't quite hear the last part. What did you say?

THE COURT: Costs will be payable after the order is entered.

MR. BISHOP: I see.

THE COURT: I suggest you get some advice, Mr. Bishop.

MR. BISHOP: Well, I go to -- the Forest Land Commission is my advisor.

THE COURT: Well, that's up to you, but you might want to avail yourself of legal services and get some advice. Mr. Holeksa can point you in the right direction.

All right, we will adjourn.