SC 124 Commissioner v. Ryan, John Wayne

ASSESSMENT COMMISSIONER

v.

RYAN, JOHN WAYNE

Supreme Court of British Columbia (367/79)

Before: MR. JUSTICE G.L. MURRAY

Victoria, April 10, 1979

Peter W. Klassen for the Appellant
John Wayne Ryan in person

Actual value - determination of assessment of leasehold interest in Crown land* - Assessment Act*, s. 24, s. 28 and s. 30

HELD:
Assessment of leasehold interests in Crown lands must be based on the actual value of the lands and improvements as if such lands were owned in fee simple by the occupier rather than merely being]eased. Lynn Terminals Ltd. *v.* The Corporation of the District of North Vancouver *(1963) 44 W.W.R. (new series) 604; and* Northwest Holding Society *v.* The Corporation of Delta *(October 4, 1966) - Case 50 appealed by way of stated case) - followed. Re: Mercer's appeal (1961-1962) 36 W.W.R. (new series) 199 - not followed.*

Reasons for Judgment (Oral) April 10, 1979

I am faced with 12 almost identical appeals under the provisions of section 67 of the *Assessment Act*, being chapter 6 of the Statutes of British Columbia, A.D. 1974. I am today delivering judgment in the Ryan appeal, which is number 367/79 in the Victoria Registry. My reasons for judgment apply equally to the other 11 appeals, and the same answers will be given to the questions asked in those other appeals.

Yesterday I dealt with the two preliminary objections taken by counsel for the respondent, and I reserved judgment on his third preliminary objection until I had heard argument on the merits of the appeal.

The third preliminary objection was that there was no point of law involved in the appeal, hence I was without jurisdiction to deal with the matter.

The Stated Case reads in part as follows:

> "THIS CASE STATED by the Assessment Appeal Board pursuant to the *Assessment Act,* humbly sheweth that the above mentioned appeal was heard at Vernon, British Columbia, on the 25th day of October, 1978, when we allowed an appeal by the respondent herein of the respondent's 1978 assessment of a parcel of land, located at Shuswap Lake, in the Province of British Columbia. The said lands are assessed under roll number 20-89-609-19651.000.
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> The appellant being dissatisfied with the decision of the Board, has required the Board by written notice to submit a case to the Supreme Court of British Columbia setting forth the facts and grounds of the Board's determination for the opinion of the said Court.
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> The facts are as follows:
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> 1. The subject property is a parcel of land located at Shuswap Lake. The respondent leases the property from the Crown Federal with the consent of the Little Shuswap Band of Indians on a long-term lease with three years of the term remaining at the date of the hearing of the appeal by the Assessment Appeal Board.
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> 2. The assessor determined the "actual value" of the land for assessment purposes at $23,800.00 which value was sustained by the Court of Revision. The respondent appealed to the Assessment Appeal Board and the appeal was heard on the 25th day of October, 1978.
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> 3. In arriving at the "actual value" of the subject land for assessment purposes the assessor valued the lands as if they were held in fee by the respondent. In determining the "actual value" the assessor used the "comparative market approach" and in so doing used sales of private freehold land said by the assessor to be comparable to determine the "actual value" of the subject lands.
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> 4. The Board by its decision dated the 14th day of December, 1978, a copy of which is hereunto annexed and marked as "A", reduced the "actual value" of the subject lands to $3,000.00.
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> 5. The respondent had purchased his leasehold interest in the subject property in June, 1977, and in an arms length transaction for $9,000.00 there was no dispute as to the actual value of improvements valued at $6,600.00 consisting of a modest summer cabin. The actual value of the land as determined by the Board at $3,000.00 was arrived at by the Board finding that the actual value of the land was equivalent to the value of the respondent's leasehold interest in the land as indicated by the purchase price paid by the respondent in June, 1977.
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> 6. Considerations affecting the Board's disposition of the appeal are set out in the decision in the Bridge appeal which is annexed hereto and marked "B". The particular facts relating to the Ryan appeal are set out in example number 10 in the Bridge decision.

7. The Board further found that a Crown fee is not a private fee and is not comparable with it.

8. The appellant commenced the within appeal by filing the Notice of Application to the board to state a case concerning its decision and such Notice of Application of the Board is annexed hereto and marked "C".

The appellant having required us to submit a case to the Supreme Court of British Columbia, the following questions of law are submitted for the opinion of the Court:

(a) In view of the form of Notice of Application to state a case did the Board have any jurisdiction to enter at all upon the matter of stating a case?

(b) Did the Assessment Appeal Board err in law and fail to value the subject land at its "actual value" as required by section 28 and section 24 of the *Assessment Act*, chapter 6, S.B.C., 1974?

(c) Did the Assessment Appeal Board err in law in accepting evidence of the purchase price of the respondent's leasehold interest as evidence of the "actual value" for assessment purposes of the subject land?

(d) Did the Assessment Appeal Board err in law in fading to accept evidence of the sale price of freehold lands said to be similar to the subject property as being the best and only evidence of the "actual value" for assessment purposes of the subject property?

(e) Did the Assessment Appeal Board misdirect itself as to the meaning of section 28 and section 24 of the *Assessment Act*, when it found that the "actual value" of the land was equal to the value of the lessee's interest in the subject land?

(f) Did the Board err in law when it found on the evidence that "a Crown fee" is not a private fee and is not comparable with it"?

I turn now to Appendix "B" of the stated case, which appendix contains the reasons of the Board in the Bridge matter, which were made after this appeal, and I read the following extracts therefrom:

"Arising in this and other appeals here referred to is a question which is perhaps the most difficult the Board has been called upon to answer, namely: what weight should be given to evidence of market value of an assessed interest in Crown land when that evidence indicates a value below the assessed value arrived at by assessing it as private freehold.

On the one hand, we are told that on previous case authority, the assessor is obliged to assess a leasehold or other partial interest in Crown land as a freehold interest.

On the other hand, we are often presented with hard evidence that the property subject to assessment has been bought, or sold, in the open market at something far less than the "actual value" claimed by the assessor.

We are cognizant that the best evidence of actual value is market value as established in an arms length transaction. We are ill at ease and feel we may be called upon to do an injustice if we must find that market value or other strong indications of value are to be ignored.

Assessors in this and like appeals say that they are bound by section 28 (2) of the *Assessment Act* which states that the interest of one holding or occupying Crown lands shall be valued at the actual value of the land and improvements as *determined under section 24*.

Under section 24, the assessors may give consideration to present use, revenue, or rental value, the price that the land might reasonably be expected to bring if offered in the market by a solvent owner and *'any other circumstances affecting value.'* It has been pointed out to us that under the definition section of the Act, "owner" includes the lessee or occupier of Crown lands.

As we understand section 24, it requires an assessor not to act arbitrarily but with common sense and fairly. He should not pick one method of valuation where common sense indicates that another more clearly reflects actual value, nor should he exclude circumstances affecting value when common sense indicates that they do indeed affect it.
In our view, circumstances affecting value are revealed in each of the following examples and should not be ignored. In the market place, the holding of the fee by the Crown apparently is looked upon as a blight affecting value in much the same way as a zoning restriction. Perhaps this arises out of concern for the uncertainty of the bureaucratic method. A typical term in a Crown lease is as follows:

> 'Provided that in case of any dispute arising as to any matter or thing . . . the same shall be settled finally, without appeal by the Minister or his duly authorized representative.'

Perhaps the difference between market and assessed values arise through uncertainty as to government policy: perhaps because of the inability to control rental increases on Crown lands. In several instances we were told of 100 per cent rental increases and many times we were told of the difficulty or inability of tenants to hold on to their interests because of high rentals and high assessments.

For whatever reason, there is no doubt that market values on Crown lease land differ markedly from the valuations placed on them by the assessors. A corollary is that a Crown fee is unlike a citizen's fee. What private fee tenant would be likely, ever, to be so circumscribed as Aspen Planers-Example No. 4-operating as it does under the strict dual stewardship of Parks and Forestry officials; what private fee tenant, bound as Aspen Planers, would be levied upon as though unbound. In the following Example No. 2, Bowen-Colthurst, what private fee tenant would be subjected to a crippling rent bounty and assessment when there was little other practical use for the lease land. The assessor's comparisons are invariably with valuations on private freehold. But we must find on the evidence and do find that a Crown fee is not a private fee and is not comparable with it. "

Now, I turn next to the applicable provisions of the *Assessment Act*, and here I quote, first of all, the definition of "occupier" contained in section 1:-

"Occupier" means

(i) a person who, if a trespass has occurred, is entitled to maintain an action for trespass; or

(ii) the person in possession of Crown land that is held under a homestead entry, pre-emption record, lease, licence, agreement for sale, accepted application to purchase, easement, or other record from the Crown, or who simply occupies the land; or

(iii) a person in possession of land the fee of which is in a municipality and that is held under a lease, licence, agreement for sale, accepted application to purchase, easement, or other record from the municipality, or who simply occupies the land; or

(iv) a person in possession of land the fee of which is in or held on behalf of, a person who is exempted from taxation under an Act and that is held under a lease, licence, agreement for sale, accepted application to purchase, easement, or other record from the person exempted from taxation or who simply occupies the land."

Now, next I turn to the definition of "owner", also contained in section 1 of the *Assessment Act*.-

"Owner", in respect of real property, means the registered owner of an estate in fee-simple, and includes,

(i) where a person is a registered owner of a life estate, the tenant for life;

(ii) where there is an agreement for sale and purchase of the real property, the registered holder of the last registered agreement for sale and purchase; and

(iii) where the real property is held or occupied in the manner referred to in sections 28, 28A and 29, the holder or occupier."

Now I turn to the provisions of section 24, subsections (1) and (2):-

"(1) The assessor shall determine the actual value of land and improvements.

(2) In determining the actual value for the purposes of subsection (1), the assessor may give consideration to the present use, location, original cost, cost of replacement, revenue or rental value, the price that the land and improvements might be reasonably expected to bring if offered for sale in the open market by a solvent owner, any other circumstances affecting the value, and the actual value of the land and the improvements so determined shall be set down separately in the columns of the assessment roll, and the assessment shall be the sum of those values."

The next section bearing on the appeal, and the key section in this case, is section 28, and I quote subsections (1) and (2) of section 28:-

"(1) Land, the fee of which is in the Crown, or in some person on behalf of the Crown, that is held or occupied otherwise than by, or on behalf of, the Crown, is, with the improvements thereon, liable to assessment in accordance with this section.

(2) The land referred to in subsection (1) with the improvements thereon shall be entered in the assessment roll in the name of the holder or occupier thereof, whose interest shall be valued at the actual value of the land and improvements determined under section 24"

Now, the next section bearing on the appeal is section 30, and I quote:-

“Where an interest in land or improvements other than the ownership of the fee-simple is liable to assessment under the provisions of this or any other Act, the assessed value of the interest shall be the sum that a willing purchaser would be expected to pay to a willing vendor for that interest, without including the value of the goodwill of a business connected with that interest."

Now, prior to the year 1974, land of the kind being dealt with in this appeal was dealt with under the provisions of the *Municipal Act*. That Act contained definitions of "owner" and of "occupier" which, for all practical purposes, are identical with the definitions contained in the present *Assessment Act*. The *Municipal Act* also contained section 338, subsection (1), which was the equivalent of section 30 of the *Assessment Act*, and section 335, subsections (1) and (2), which are the equivalent of section 28, subsections (1) and (2) of the *Assessment Act*.

Sections 338, subsection (1), and 335, subsections (1) and (2), were considered by the late Mr. Justice Collins in the case of *Lynn Terminals Limited* vs. *The Corporation of the District of North Vancouver, (1963) 44 Western Weekly Reports (New Series), 604*, and he held that section 335 applied to the exclusion of section 338 in determining the assessment of Crown lands held under lease.

A similar result was reached by my brother Dryer in the case of *Northwest Holding Society* vs. *The Corporation of Delta*, decided on October 4, 1966, and reported as *Case number 50* for that year in the *Appeals by way of Stated Case*. The judgment of Mr. Justice Dryer was upheld by the Court of Appeal in the same case report.

In other words, those cases held that the assessment of leasehold interests in Crown lands must be based on the actual value of the lands and improvements as if such lands were owned in fee-simple by the occupier rather than merely being leased.

The opposite result was arrived at by the late Mr. Justice Sullivan in the case of *Re Mercer's Appeal (1961-62) 36 Western Weekly Reports (New Series) 199*, but I am of the view that I am not at liberty to follow that case in light of the later decisions of Mr. Justice Collins and Mr. Justice Dryer, the later of those decisions carrying with it the blessing of the Court of Appeal of this Province.

As some meager consolation to the respondent, I may say that I have great sympathy for the predicament in which he finds himself, and that if the matter had been one of first impression I would have striven mightily to arrive at the opposite result to that which I have actually arrived, although even in those circumstances I would probably have been impelled to the same conclusion by reason of the fact that, even if a Judge doubts the wisdom of the legislation, he is bound by the clear language used by the Legislature, and must not read into that legislation words that are not there.

To reach the result desired by the respondent in this case, I would have to read into section 28 words which do not appear therein.

In all of the circumstances I would allow the appeal and answer questions A to E inclusively in the affirmative. Counsel for the appellant did not press me for an answer to question F.

It follows, of course, from what I have said that the respondent's third preliminary objection must be dismissed as I am clearly of the view that a

question of law was raised in the appeal.

In the peculiar circumstances of this case I am going to exercise the discretion conferred on me by section 67, subsection (3), of the *Assessment Act*, and allow the appeal without costs to either party. The same ruling as to costs also applies to the other 11 appeals. In accordance with section 67, subsection (5), of the *Assessment Act*, these reasons which constitute my opinion will be remitted to the board forthwith.