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SC 150 Genstar Ltd. v. District of Mission

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GENSTAR LTD.

v.

DISTRICT OF MISSION

Supreme Court of British Columbia (A810072) Vancouver Registry

Before: CHIEF JUSTICE ALLAN McEACHERN (in chambers)

Vancouver, March 25, 1981

E. Neil Kornfeld for the Appellant
C.D. McQuarrie and Ms. K.M. Floeck for the Respondent

***Appeal to Supreme Court must follow procedure in s. 74* Assessment Act**

On a motion in Chambers, BLOCK BROS. CONTRACTORS LTD. applied to be added as a party appellant in GENSTAR'S stated case appeal. Both corporations owned a number of lots in the Mission area which were purchased for development. Both had been respondents in appeals brought by the District of Mission to the Assessment Appeal Board, which appeals were heard together. Subsequently BLOCK BROS. failed to deliver copies of its stated case to "persons affected" under s. 74 (2) (b).
HELD:
BLOCK BROS.' appeal is out of time, and there is no procedure other than s. 74 for commencing an appeal in the Supreme Court. Therefore BLOCK BROS. should not be added as a party in GENSTAR'S appeal as there would still be no stated case for the Court to consider on BLOCK BROS.' part.

Reasons for Judgment March 31, 1981

This is a Motion by Block Bros. Contractors Ltd. pursuant to Rule 15 (5) (a) to be added as a party-appellant to this appeal of Genstar Ltd. against a decision of the Assessment Appeal Board.

Block Bros. Contractors Ltd., hereinafter called "Block Bros.", is the owner of 26 lots in the Silverdale area of the District of Mission. Genstar Ltd. owns 32 contiguous and surrounding lots. Mission appealed the 1980 assessment of these 58 properties to the Court of Revision by one letter dated March 21st, 1980 which merely stated:

> "We hereby appeal the 58 properties listed below on the grounds that they are under assessed as to their 'actual value':-"

There followed 58 roll or assessment numbers (one for each property). The letter instituting that first appeal did not identify which properties were owned by which of the two owners.

The Court of Revision dismissed Mission's appeals. Mission took appeals to the Assessment Appeal Board. There is no question there were separate appeals before the Assessment Appeal Board.

It appears Block Bros.' 26 parcels, which are in the centre of Genstar's lands, were acquired sometime after Genstar purchased its lands. The Assessment Appeal Board chose to treat the purchase price paid by Block Bros. as the best evidence of value, and allowed Mission's appeals accordingly. I mention this to point out that the value of the Block Bros.' lands was and will be central to the disposition of Genstar's appeals.

As a consequence of the decisions of the Assessment Appeal Board the assessed value of Genstar's and Block Bros: lands were increased substantially.

The *Assessment Act*, R.S.B.C. 1979, c. 21 provides for further appeals by way of stated case to this Court.

Section 74 provides in part:

> "(2) A person affected by a decision of the board on appeal. including a municipal corporation on the resolution of its council, the Minister of Finance, the commissioner, or an assessor acting with the consent of the commissioner, may require the board to submit a case for the opinion of the Supreme Court on a question of law only by
>
> "(a) delivering to the board, within 21 days after his receipt of the decision, a written request to state a case; and
>
> "(b) delivering, within 21 days after his receipt of the decision, to all persons affected by the decision, a written notice of his request to the board to state a case to the Supreme Court.
>
> "(3) The board shall, within 21 days after receiving the notice under subsection (2), submit the case in writing to the Supreme Court. . . .

"(5) Where a case is stated, the secretary of the board shall promptly file the case, together with a certified copy of the evidence dealing with the question of law taken during the appeal, in the Supreme Court Registry, and it shall be brought on for hearing before the judge in Chambers within one month from the date on which the stated case is filed.

"(6) The court shall hear and determine the question and within 2 months give its opinion and cause it to be remitted to the board, but the court may send a case back to the board for amendment, in which event the board shall amend and return the case accordingly for the opinion of the court."

Genstar Ltd. complied with section 74 (2). supra. Its appeal is pending in good standing in this Court.

The solicitor for Block Bros. prepared an appropriate request for a stated case and filed it in the Vancouver Registry of this Court under No. A803449. He omitted to deliver it to the Board or to anyone else. As a consequence, Block Bros. is too late to bring an appeal on its own. Block Bros. accordingly applies under Rule 15 (5) (a) to be added *nunc pro tuncas* a party appellant to Genstar's appeals.

Mr. McQuarrie, relying upon many authorities dealing with statutory appeals, argues that there is no procedure for appealing except in accordance with section 74. He also says that Block Bros. cannot bring itself within Rule 15 (5) (a).

Mr. Kornfeld argues that many of the old cases such as *Weldon* v. *Neal* (1887), 56 L.J.Q.B. 621, and more recent cases such as *Kelly* v. *Schuitema et al* (1964). 48 W.W.R. 491 (B.C.C.A.) must be regarded as doubtful authority because of *Basarsky* v. *Quinlan et al*, [1972] 1 W.W.R. 303 (S.C.C.). He argues further that Rule 15 (5) (a) (iii) particularly, which came into force on February 1st, 1980, greatly enlarges the Court's jurisdiction to add parties to existing proceedings without regard to questions of limitation. In the latter connection Mr. Kornfeld cites *Gardner* v. *Cattermole et al* (1981) 22 B.C.L.R. 57 (B.C.S.C.) where Taylor. J., said at p. 60:

"This addition (of Rule 15 (5) (a) (iii)) plainly extends the scope of the sub-rule and raises the question whether restrictive interpretation of the rule is possible any more. I do not think it is. It seems clear that limitation defences must now be defeated whenever a claim against a person who would otherwise have had protection of the statute involves questions or issues connected with the relief sought in, or the subject matter of, an existing action brought within the limitation period against others, provided that joinder would be just and convenient. The only questions for the court are whether there is such a connection and whether joinder would, in the circumstances, be just and convenient between the proposed parties."

I have considerable sympathy for the position of the applicant and I would not, with great respect, apply the lines of cases dealing with rights of appeal to statutory courts if I could avoid doing so because the current trend of the law points in a different direction both in criminal and civil cases. This is as it should be, particularly in a Court of original inherent jurisdiction.

In this case, however, I see no escape from the force of Mr. McQuarrie's submissions. Even if I ordered that Block Bros. be added to Genstar's appeals (as I would if that would bring about a fair and just result) I do not think that would solve the problem.

Earlier I quoted some of the provisions of section 74. Those provisions make it clear that proceedings directed towards an appeal against a decision of the Assessment Appeal Board is not commenced in this Court. There must first be a written request to the Board to state a case. Thereafter the Board shall (must) submit the case in writing to the Court, and it is that case, together with a certified copy of the evidence, which is filed with the Court.

With this procedure in mind I must conclude that it would not help the applicant to be added as a party now, or *nunc pro tunc,* to Genstar's appeal as such joinder would not produce a case upon which an appeal by Block Bros. could proceed. In other words, joinder would not bring Block Bros. appeal before the Court because there is no jurisdiction to require the Assessment Appeal Board to state a case except in accordance with the provisions of the Act.

In view of the foregoing I need not consider the difficulties posed by the strict time limits prescribed in section 74 for they do not arise until a case is stated. Similarly, the power to send the case back to the Board for amendment does not arise until a case has been stated.

The motion to add Block Bros. as a party appellant to these appeals must accordingly be dismissed with costs.

GENSTAR LTD.
v.
DISTRICT OF MISSION

SUPREME COURT OF BRITISH COLUMBIA (A810072) Vancouver Registry

Before CHIEF JUSTICE ALLAN McEACHERN (in chambers)

Vancouver, April 13, 1981

John R. Lakes for the appellant.
C. D. McQuarrie for the respondent.

Single transaction inconclusive-arbitrary direction by Board

The appellant, Genstar had purchased 28 lots at various prices over a 2-year period. for land assembly purposes. The respondent then put up for sale a further 25 lots in the area of these Genstar holdings. Genstar bid for them but a rival developer, Block Bros. Ltd., succeeded in buying them, at a price considerably in excess of the prices that similar lots were fetching when sold individually to other purchasers.

The Assessment Appeal Board determined that the Block Bros.' purchase represented the best indication of value of both the Block Bros. and Genstar holdings, after certain adjustments for unusual payment conditions.

HELD:

(1) The Board acted arbitrarily in directing that the subject lands be assessed according to a formula increasing all previous assessments by the same ratio-following the Kingsview Properties *case.*

(2) The Board erred in acting solely on the evidence of one transaction, and in accepting special value to Block Bros. as conclusive evidence of value of comparable lands.

Ordered:

That the Board reconsider the matter taking into account both the developer purchases and the private sales. and the duty to determine value of each lot individually.

Reasons for Judgment May 25, 1981

This is a Stated Case appeal by Genstar Limited ("Genstar"), against a decision of the Assessment Appeal Board ("the Board"), with respect to certain lands in the Silverdale area of the District of Mission.

The lands in question comprise 28 different lots which Genstar acquired between 1975 and 1977 at various prices averaging $4,100.00 per acre for land and buildings, and $3,748.00 per acre for land alone. The area is 1149.67 acres but there is no dispute regarding 346.50 acres. What is in question is 710.03 acres.

In November 1979 Mission offered to sell a further 439.71 acres, in 13 different packages (comprising 25 lots) in the centre of Genstar's lands. Only Genstar and Block Bros. Limited bid for these lands which were not widely advertised. Block Bros. was the successful bidder at $3.925,620.00 payable 25 per cent in cash, and the balance payable over 10 years at 9 per cent. Genstar's tender was close to Block Bros. but was structured differently. Genstar offered a cash payment for each package, and a further payment of $3,000.00 per acre upon an application to develop the property being approved by Mission. Assuming all the property was approved for development, Genstar's total offer would be $3,787,505.00. One of the witnesses described Genstar's deferred $3.000.00 per acre as "insurance" that the property would be approved for subdivision.

Block Bros.' bid was for all or none of the packages. Genstar did not impose such a condition.

The Assessor determined the value of the Genstar lands by comparison with a number of sales in the area, but he excluded the Genstar acquisitions and the Block Bros.' purchase because he considered they represented special values to the owners. From these other sales the Assessor determined value, and, by relating price to size, the Assessor arrived at a schedule of values ranging from $7,200.00 per acre for 5 acre lots, to $1,145.00 per acre for 100 acre lots. His average value per acre was $2,310.00.

An appeal by Mission to the Court of Revision was unsuccessful. Mission then appealed further to the Board which allowed the appeal as to all the 28 lots in dispute. The Board fixed a substantially higher average value for the properties of $7,000.00 per acre, based entirely upon the adjusted price paid by Block Bros. That adjustment was made necessary because of the uneconomic interest rate payable by Block Bros. on the deferred balance.

As mentioned earlier, the Assessor fixed individual values for each lot mainly because of differences in size, but his average value was $2,310.00 per acre. As the Board determined the new per acre value was $7,000.00, it directed that each of Genstar's lots should be assessed at an increased value from what the Assessor found, such increased value to be determined by applying the ratio of $7,000.00/$2,310.00 to the value given by the Assessor.

Amongst other things, Genstar complains that the Board has not attempted to determine the value of any of its lots. Rather, Genstar argues, the Board has assumed that all of Genstar's and Block Bros.' acreage has the same value, and the Board only found different values for different lots by means of the formula mentioned above. As a result, the Board has determined that all the lots at the higher per acreage value have the same value for assessment purposes in relation to each other as they had under the original assessment.

I believe it is accurate to summarize Genstar's first two submissions by saying that the method followed by the Board is arbitrary, and that it assesses the property at value to owner.

In fairness to the Board it may be said that the subject lands, and the Block Bros.' 1979 acquisition are, generally speaking, comparable as to topography and, of course, location. The lots are not of equal size.

This appeal is governed by section 26 (1) and (2) of the *Assessment Act*, R.S.B.C. 1979 c. 21 which provides:

> "26. (1) The assessor shall determine the actual value of land and improvements.
>
> (2) In determining the actual value under 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, and 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."

In *Pacific Logging Co.* v. *British Columbia*, (1977) 16 N.R. 513, McIntyre, J.A., (dissenting, affirmed in the Supreme Court of Canada), described the assessment process at p. 523 as:

> "The assessor must determine the actual value of these lands. He must do so in accordance with (s. 26). In doing so he may give consideration to the various factors mentioned in the section, or some of them, and he may as well consider 'any other circumstances affecting the value.' Failure to assess according to this section amounts to error in law. . . ."

In support of its submission that the Board's assessment is arbitrary Genstar relies upon *Pacific Logging* v. *British Columbia*, supra, *Assessment Commissioner* v. *Seaspan International Ltd. et al* (1979) B.C. Stated Cases, No. 129, p. 771; and *Assessment Commission* v. *Kingsview Properties* (1979), 12 B .C.L.R. 138.

In response, Mr. McQuarrie for the District of Mission, contends that these lands were part of a land assembly, and that the Board found as a fact (which is not really disputed), that the highest and best use of these lands is "for holding as a land bank for future development". He says, further, that this is an exceptional case where the ordinary rules cannot be applied: *Montreal* v. *Sun Life Assurance Co. of Canada* (1952) 2 D.L.R. 81 per Lord Porter at p. 101. For these reasons, Mr. McQuarric argues, it is permissible to value the Genstar lands on an acreage basis, giving weight to the different size of the various parcels.

In my view the Board erred in deciding, as it did, that the Genstar lands may be valued by the formula it employed. The use of a formula by its nature tends to be arbitrary in the sense used by McIntyre, J.A., in the *Pacific Logging* case, i.e., "a decision made in absence of specific evidence and based upon opinion or preference". It is arbitrary in this case because it assumes that the increased value of each lot, regardless of its size, may be determined by a ratio of the increased per acre value to the former value. It is probable, in my view, that the increased value would not be found in the various lots in the absolute terms required by the formula. The increased value may be distributed quite differently. In other words, it is my view that the

spread between the larger and the smaller lots may be greater or less in view of the much greater per acre value. In that sense, the conclusion reached by the Board is arbitrary. I am comforted in this conclusion by the helpful statement of Trainor, J. in the *Kingsview Properties* case, supra, at p. 142.

> "The responsibility of the Board was to determine the value of each lot. This responsibility was not met by designing a formula, however accurate, which was handed back to the assessor."

I turn next to consider the question of value to owner. What has happened is that Genstar has assembled a large tract of land including many separate lots of varying sizes at values which are greater per acre for smaller lots than for larger lots. Genstar's cost per acre is greater than the indicated market value derived from other sales which the Assessor used as comparable properties in his assessment. When the District of Mission offered an additional 439.71 acres to the market, Genstar was willing to purchase and thereby increase its acreage, and it bid what it was willing to pay but hedged its offer by including a $3,000.00 per acre holdback until the property was ready for development.

Block Bros., on the other hand, which is developing a large tract of land in joint venture with Genstar in Coquitlam, wished to buy into a possible joint venture with Genstar in the development of these lands. Block Bros. accordingly bid what it thought it would have to pay in these circumstances in order to get the land, knowing as it did that Genstar would probably be interested in increasing its already substantial holdings.

The Assessor relied upon other sales and disregarded the other Genstar acquisitions and both the Genstar and Block Bros. offers for the additional lands. The Assessor's opinion was that the other sales were the best indication of value, and that Genstar's assembly acquisitions, and the sale to Block Bros., were special cases which did not indicate true value.

I cannot weigh the evidence and reach a conclusion on value. I may only look at the evidence for the purpose of interpreting or explaining the Statement of Facts: *Provincial Assessors of Comox, Cowichan and Nanaimo* v. *Crown Zellerbach Canada Limited et al* (1963) 42 W.W.R. 449.

Genstar argues that the sale to Block Bros. upon which the Board relied as the sole indicator of value, is a reflection not of value generally, but of value to large developers such as Genstar and Block Bros. Genstar points out that the Board found the 9 per cent interest rate on the deferred balance was uneconomic and required adjustment to 15 per cent. It was argued that the District of Mission was really making a special arrangement because it would not sell to every purchaser on similar terms, i.e., 9 per cent over 10 years. Genstar relies upon: *C.N.R.* v. *Vancouver*, [1950] 2 W.W.R. 337 (B.C.C.A.); *Re Desautels Appeal* (1959), 29 W.W.R. 665 (B.C.S.C.); *Shell Oil Company of Canada et al* v. *Corporation of District of North Vancouver* (1961), B.C. Stated Case No. 24, page 96 (B.C.S.C.); and *Provincial Assessors of Comox et al* v. *Crown Zellerbach Canada Limited et al*, supra.

In short, Genstar says the Board accepted value to an owner (Block Bros.) as value for assessment purposes, and acted upon one sale which is an unreliable indicator of value. It is argued that that sale is coloured by unusual and uneconomic terms. Why, Mr. Lakes asked rhetorically, would Mission sell land for future development with only 25 percent down, and the balance over 10 years at an uneconomic (and unrealistic) rate of interest? It must be, Genstar argues, that Mission and Block Bros. have their reasons, but a transaction consummated on such a basis does not establish value for assessment purposes.

The District of Mission argues that the best evidence of value is the price paid at or near the date of valuation: *Assessment Commissioner for British Columbia* v. *Houston*, [1979] 5 W.W.R. 639 (B.C.S.C.), and that, as the Board was considering both the Block Bros.' land as well as Genstar's land, and as the lands are similar, the prices paid by Block Bros., in competitive bidding, is the best evidence of value. Further, it was argued, that when there are two willing purchasers, the concept of special value to the owner is inapplicable.

Mission argues forcefully that a land assembly or land bank distinguishes this case from cases such as *Pacific Logging, Seaspan* and *Kingsview*, and that, as value in section 26 means market value, it is permissible to apply an acreage price to all the lands. It is argued that the lands being assembled have a greater value than lands not being assembled, and that this greater value or potential is an attribute that must be considered: *Shell Oil Co. of Canada Ltd. et al* v. *Corporation of District of North Vancouver* (1961) No. 24 Stated Cases p. 96 (B.C.S.C.). I agree that the potential of land must be considered.

Mission also relies upon *Assessment Commissioners of the York Assessment Office* v. *Office Speciality Limited*, [1975]1 S.C.R. 677 (S.C.C.); *Arpro Developments Ltd.* v. *The Queen* (1978), 5 B.C.L.R. 184 (B.C.C.A.), affirmed S.C.C. (1978) 22 N.R. 451; and *Weidman et al* v. *Minister of Public Works* (1979), 14 B.C.L.R. 129. The latter two cases, of course, are expropriation cases.

Lastly, Mission argues that there was independent appraisal evidence that the lands had a market value as at December 31st, 1979 of between $8,000.00 and $9,000.00 per acre. That is so, but it is based entirely upon the Block Bros. sale, and it is subject to the same infirmities, if that is the word, as the decision of the Board.

My conclusion is that the Board did err in acting solely upon the one transaction, and in attempting to apply that price to all the Genstar lands with only an adjustment for the uneconomic interest rate. The price offered by Block Bros. for all 13 packages does not establish the value of the Genstar lands. Rather, that price reflects the special value of those lands, and only those lands, to Block Bros. Genstar's bid, also, indicates only the special value those same lands had to Genstar in the circumstances, but does not indicate the value of Genstar's other lands: The Crown Zellerbach case, supra, per Davey, J.A., (as he then was) at page 460.

For these reasons the conclusion of the Board was reached upon an incorrect basis and cannot be allowed to stand.

What the Board is required to do is to determine the actual value of the Genstar lots on an individual basis. In that determination, the Board must give consideration to the other sales relied upon by the Assessor, but, it seems to me, the Board may also consider the Genstar purchases and the Block Bros. purchases. In this latter connection, however, it is my view-although this is entirely a matter for the Board-it should consider the circumstances of that acquisition, and it should make such discounts as it thinks proper not just for the uneconomic interest rate, but also for the other terms particularly the deferred payment provision and the question of special value.

I wish to mention one particular finding of the Board. It said, "A close examination of the two bids, on the basis of what each would be likely to return to the vendor in a 10 year period, shows them to be remarkably close."

It is not for me to determine the basis upon which the Board made this finding. Many assumptions and discounts would have to be made and calculated in order to support such a conclusion. It is sufficient for me to say that a comparison of these two bids, and an attempt to rationalize them, illustrates why it is dangerous, and perhaps unfair, to base an assessment upon one unusual transaction, even where there are competing bids. The Board has really accepted special value to Block Bros. as conclusive evidence of the value of all comparable lands.

Lastly, Genstar relying upon section 44 (1) (b) and section 69 (1) (d) of the *Assessment Act*, supra, and numerous authorities, argues that the Board has not, as required, adjudicated upon the appeal in such a way so as to ensure that all assessments shall be fair and equitable, and fairly represent actual value within the area.

It seems clear on the authorities that the first duty of both the Assessor and the other assessment tribunals is to arrive at actual value. In view of the disposition of this appeal, that stage has not yet been reached. I do not, therefore, propose to pronounce on this interesting submission. It would be wrong for me to conclude at this time that the Board will not give proper consideration to these statutory provisions when it considers the matter further.

Questions 1 and 2 ("Did the Board err. . .") of the Stated Case must be answered in the affirmative. I do not propose to answer questions 3 and 4. I decline to make a specific response to question 3 because there may be confusion between value to owner (Genstar) with value to Block Bros. The second part of my reasons is reflected in my answer to question 1. I have already stated why I do not propose to answer question 4.

The case is remitted to the Board for further consideration in accordance with these reasons. Genstar is entitled to costs.

SC 150cont Genstar Ltd. v. District of Mission

GENSTAR LTD.

v.

DISTRICT OF MISSION

British Columbia Court of Appeal (CA 810521) Vancouver Registry

Before: MR. JUSTICE E.B. BULL
MR. JUSTICE E.E. HINKSON
MR. JUSTICE J.A. MacDONALD

Vancouver, October 26, 1981

Colin D. McQuarrie and W.A. Owen McQuarrie for the Appellant, District of Mission.
John R. Lakes for the Respondent, Genstar Ltd.

Appeals - Procedure - Stated Cases - Joining Parties - Valuation - Subdivisions

The District of Mission appealed the decision of McEachern C.J. reported herewith on the grounds that His Lordship erred in directing the Assessment Appeal Board to consider evidence of other sales than the sale to Block Bros. Ltd., and in expressing the opinion that the Block Bros. sale might contain an element of. special value to owner.
HELD, dismissing the appeal, that His Lordship made no directions contrary to what the Assessment Act *requires the Assessor to consider under s. 26. and hence made no error.*

Reasons for Judgment of Mr. Justice Bull (Oral) October 26, 1981

Coram

HINKSON, J.A.: I am going to ask my brother Bull to deliver the first judgment.

BULL, J.A.: This is an appeal by a Municipality under the provisions of section 74 of the *Assessment Act* 1979. R.S.B.C. chapter 21. I may say that the applicable 1979 sections of the statute are the same as those in the earlier revision. The appeal to this Court is from the determination by the Supreme Court on a Stated Case made to it upon the finding and determination of the Appeal Board.

The appeal has reference to the valuation for assessment purposes of some 2,710 acres of land in the Mission area which is composed of a number of parcels and lots.

The Assessment Appeal Board concluded and made a finding that the market value for assessment purposes of the property in question was $7,000.00 an acre, as opposed to the roughly $2,310.00 per acre found by the assessor. The Assessment Appeal Board ordered that the Assessor reassess the property in question by applying to each parcel the formula of 7,000 over 2,310 which, of course, meant that lots of various sizes, and presumably of different value, would all end up with the same proportionate value increase.

The taxpayer, the respondent, Genstar Ltd.. owned the property in question which, I might add, included a greater number of acres and lots than the 2,710 acres which I have mentioned. The excess was not the subject of any appeal as to its assessment. What happened was that as the 1980 Assessment Roll was being prepared, and in fact completed, in the fall of 1979, another adjoining area of 439.71 acres, covering 13 parcels, or 25 lots, was sold by the City of Mission, the taxing authority, to Block Bros. Ltd., for a price that worked out at $3,925,000.00 which roughly, in view of the terms of the transaction, amounted, according to the Board of approximately $7,000.00 an acre. It is that valuation that resulted in the formula which I have already mentioned being devised and applied to the lands here in issue.

The taxpayer, Genstar Ltd., duly appealed the decision of the Board to a judge of the Supreme Court by way of Stated Case. He held that the assessment was bad and remitted the matter to the Assessment Appeal Board. The principal ground was that it was an arbitrary assessment because of the formula adopted and used and the resulting failure in the Board to properly assess the value of each parcel or lot on the assessment roll. In *Pacific Logging Company* v. *British Columbia* (1977) 16 N.R. 513 McIntyre, J.A., (who dissented in this Court) was confirmed as correct by the Supreme Court of Canada. The decision was that the Assessor must determine the actual value of the lands. He must give consideration to various factors but he must not apply an arbitrary assessment, as was there done. The judge here concluded that *Pacific Logging Co.* applied and held that the assessment must be remitted to the Board for reconsideration. I agree with that conclusion.

The learned judge here also indicated that he thought that it was probable that the Board, in accepting as a basis for its formula the $7,000.00 valuation

given to the acreage bought by Block Bros. Ltd. in the fall of 1979 may have inadvertently included therein a special value to owner, in view of the relationship between Block Bros. Ltd.. their own large holdings in the area, and those of the respondent, Genstar Ltd.

I may add that the property bought by Block Bros. Ltd., was in the centre of the Genstar holdings.

In any event, the net result was that the appeal by Stated Case was allowed by the Supreme Court Judge and the assessment set aside and the matter remitted. That is not questioned before us as the appellant, the City of Mission, does not object to that decision but it does complain against some advice, directions or instructions which were appended to the judge's reasons for judgment. The judge said this:

> "What the Board is required to do is to determine the actual value of the Genstar lots on an individual basis. In that determination, the Board must give consideration to the other sales relied upon by the Assessor, but, it seems to me, the Board may also consider the Genstar purchases and the Block Bros. purchases. In this latter connection, however, it is my view-although this is entirely a matter for the Board-it should consider the circumstances of that acquisition, and it should make such discounts as it thinks proper not just for the uneconomic interest rate, but also for the other terms particularly the deferred payment provision and the question of special value."

The appellant has raised several points in connection with these directions, of which we found only two necessary to have argued before us.

The first was that the direction that the Board should consider other sales relied upon by the Assessor when the highest and best use of such other lands might be quite different from that of the subject lands, was incorrect. The second was that the opinion expressed that the price paid by Block Bros. Ltd. might have or contain an element of special value to owner when, in fact, both Block Bros. Ltd. and the respondent were bidding on the same land at approximately the same price, so that the Genstar bid also contained an element of special value to owner and, therefore, was not a true indicator of market value.

I do not read into the language which I have quoted from the learned judge as directing anything to support those two complaints by the appellant. In my view, all the learned judge said was what was correct and what he was entitled to make. The Board is required to determine the actual value of the respondent's lots on an individual basis. That is a matter that has been long decided. And then he goes on:

> "In that determination, the Board must give consideration to the other sales. . ."

That is quite appropriate because although the Assessor did give consideration to some other sales, he did not consider the Block Bros. Ltd. sale. All the judge was saying was that all other appropriate sales should be considered, but he also added, to make it sure beyond all doubt, that the Board could still consider the Genstar Ltd. purchases, as well as Block Bros. Ltd. purchases; in other words, the matter was wide open.

In this connection in my view he was careful to say that it was entirely a matter for the Board to decide but that it should consider the circumstances surrounding the whole acquisitions and should make such proper discounts and allowances for various matters, including (if they find it) any special value built in the price paid by Block Bros. set to acquire its acreage.

Accordingly, it seems to me that the learned judge has not given any advice or directions which are contrary to what should have been given in remitting the assessment. I refer to section 26 of the *Assessment Act* which says:

> "26. (1) The assessor shall determine the actual value of land and improvements.
>
> (2) In determining the actual value under 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, and 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."

To my mind what the learned judge said here, after setting aside the award and remitting, it was merely carrying out in a little more detail, perhaps applicable to this particular case, what the Assessor was bound to do under the Act. Accordingly, I find nothing wrong with the directions or instructions given by the learned judge and I would not vary them. I would dismiss the appeal.

HINKSON, J.A.: I agree.

MACDONALD, J.A.: I agree.

HINKSON, J.A.: The appeal is dismissed.