SC 165 Tri-Crest Inv. v. AA20

TRI-CREST INVESTMENT CORPORATION

v.

ASSESSOR OF AREA 20 - VERNON

Supreme Court of British Columbia (A820748) Vancouver Registry

Before: MADAM JUSTICE McLACHLIN

Vancouver, April 5, 1982

N. Kornfeld for the Appellant
J. Greenwood for the Respondent

Farm Classification - date for satisfaction of requirements

Appellant leased land to farmer under a written lease. Further land was then leased orally in 1980 to the farmer on similar terms, but no written lease covering the additional acreage was entered into until January 2, 1981.
HELD:
That for the purpose of sec. 7 of the Farm Classification Regulation 288/79, there was no written lease covering the additional land for the 1981 assessment year. The Assessor must close the roll by December 31 of the previous year, which necessarily implies that land must be classified prior to December 31, and that land must fit the standards for classification on or before that date to receive farm class.

Reasons for Judgment April 15, 1982

This is an appeal by way of stated case from a decision of the Assessment Appeal Board in Vernon, that certain land did not qualify for farm classification for the 1981 taxation year.

The appellant owns a number of lots in the area in question. One of them, Amended Lot "G", was leased by the appellant to Walter Ulansky under a written tenancy dated August 22, 1978. In January 1980, it was orally agreed between Mr. Ulansky and the appellant to extend the written lease to a further 323 acres owned by the appellant. However, no written lease covering the remaining 323 acres was signed until January 2, 1981. The date of the written lease is important because of B.C. Reg. 288/79, section 7 (made pursuant to section 28 (2) of the *Assessment Act*, R.S.B.C. 1979, c. 21), which permits lots, which considered individually would not qualify as farm land, to be considered together in certain circumstances.

> "7. Land may be classified as a farm where it consists of all or part of any parcel or group of parcels of land, contiguous or not, making up a tract of land owned or held under a written lease by a person singly or jointly with any other person or persons and operated as an integrated farm operation for primary agricultural production."

The Assessor based his assessment of the land in question for the 1981 tax year upon the land status in 1980. Since there was no written lease of the 323 acres in 1980, he denied them farm classification. The Assessment Appeal Board upheld this decision. The appellant now appeals to this Court.

The following questions are put to this Court:

> "1. Did the Board err in its decision that the parcels of Land being the subject of the appellant's appeal (with the exception of Amended Lot 'G' (see DD 216774F), Sections 13 and 24, Township 8, Osoyoos Division Yale District, Plan 1362, except part on Plan 28442) were not held under a written Lease for the calendar year 1980?
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> 2. If the Board did not err in its finding that the said parcels of land were not held under a written lease for the calendar year 1980, did the Board err in its decision that the parcels of land being the subject of the appellant's appeal (with the exception of Amended Lot 'G' (see DD 216774F), Sections 13 and 24, Township 8, Osoyoos Division Yale District, Plan 1362, except part on Plan 28442) did not qualify for farm classification for the 1981 assessment roll pursuant to the provision of section 28 (2) of the *Assessment Act* and within the meaning of the standards prescribed by B.C. Regulation 288/79, by reason only that the said parcels were not held under written Lease for the calendar year 1980?"

I would answer the first question negatively. It is clear that there was no written lease pertaining to the relevant property in 1980; not until January 2, 1981, did the parties sign a written lease for the supplementary 323 acres, the assessment of which is in issue.

I would also answer the second question negatively. The appellant argued that because section 7, B.C. Reg. 288/79 does not state expressly at what time the lands must be "held under a written lease", it follows that the lease need not have been entered into in 1980 for the land to qualify as farm land on the 1981 assessment roll. I cannot accept that argument. The scheme of the *Assessment Act*, is that an annual roll be prepared not later than December 31 of each year (section 2). In preparing that roll, the Assessor must determine the actual value of the land and improvements (section 26), a determination which pre-supposes that the land has been classified (see section 28 (3). If the Assessor were required to consider the status of the land after December 31 of the relevant year, he could not comply with the duty imposed upon him to prepare a roll by December 31. It follows that the Assessor must consider the land as it stands no later than December 31 of the relevant year. The fact that the assessment and regulations made pursuant to it specifically prescribe earlier dates for ascertaining particular matters, does not detract from the necessary inference that the property must be considered as it stands no later than December 31 of each year, for the purpose of determining taxation in the following year. I therefore conclude that "land owned or held under a written lease" in section 7 of the regulation refers to land so held in the relevant year for purposes of assessment, which in this case was 1980.

The answer to both questions stated is negative. The appeal is dismissed.