TAYLOR BLVD. REALTIES LTD., BELLEVUE HOUSING CORP., ALVYN DEVELOPMENT LTD., HYMAN BAER MILLER AND EARL GREENBLATT (*Petitioners*) APPELLANTS;

1963
*Nov. 8
Nov. 8

AND

THE CITY OF MONTREAL (*Defendant*) RESPONDENT.

APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Municipal corporations—Mandamus—Adoption of new zoning by-law—Vested rights of land owner—Whether entitled to indemnity—Charter of the City of Montreal, art. 300, para. 44(a), enacted in 1954-55, 3-4 Eliz. II, c. 52, art. 4(c)—Charter of the City of Montreal, art. 524, para. 2, enacted in 1959-60, 8-9 Eliz. II, c. 102—By-laws 1920 and 2414 of the City of Montreal.

In 1953 the appellants acquired a vacant emplacement in Montreal where the building of multifamily dwellings was permitted by the zoning by-law then in force. In 1958 the City adopted a by-law restricting to single-family dwellings the type of building that could be erected in the locality. In 1961 the appellants sought to resort to the procedure of arbitration provided for under para. 44(*a*) of art. 300 of the City Charter for the recovery of an indemnity for loss of vested rights. It was conceded that the appellants never obtained nor sought to obtain a building permit nor did they make any subdivision, opening of streets or similar works with respect to this land. It was argued by the City that the appellants had not been deprived of any vested rights. Upon the refusal of the City to appoint its own arbitrator, the appellants applied for a writ of mandamus. The trial judge dismissed the action, and his judgment was affirmed by the Court of Queen's Bench. The appellants appealed to this Court.

Held: The appeal should be dismissed.

The true import in para. 44(*a*) of the expression "having vested rights" or "droits acquis" could not be ascertained adequately without regard to the context, the nature, object and purpose of the enactment in which it appeared. The presence of this expression in the text would be superfluous had the Legislature considered sufficient for one to possess rights common to all "owners, tenants or occupants", to be entitled to an indemnity. The appellant's claim could not be entertained. *Canadian Petronina Ltd. v. Martin and Ville de St-Lambert,* [1959] S.C.R. 453, applied.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], affirming a judgment of Robinson J. Appeal dismissed.

*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Abbott and Judson JJ.

[1] [1963] Que. Q.B. 839.

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Gordon F. Henderson, Q.C., and *J. Richard,* for the petitioners, appellants.

P. Casgrain and *J. P. Lamoureux,* for the defendant, respondent.

The judgment of the Court was delivered by

FAUTEUX J.:—The facts giving rise to this litigation are simple and undisputed. In November 1953, appellants acquired a vacant emplacement on Dudemaine Street in the City of Montreal. At that time, the building of multi-family dwellings, two storeys in height, was there permitted under City by-law no. 1920. In June 1958, the City adopted by-law no. 2414 further restricting to single family dwelling units only the type of buildings that could be erected in the locality. Three years later, in May 1961, appellants, contending that the value of their vacant emplacement had been substantially reduced as a result of this new building restriction, sought to resort to the procedure of arbitration provided for under para. 44(*a*) of art. 300 of the City Charter for the recovery of the indemnity therein contemplated for loss of vested rights. Having appointed their arbitrator, they requested the City to appoint its own, and upon the refusal of the latter to do so, procured the issue of a writ of mandamus to compel the City to arbitrate.

Contested by the City, this action of the appellants was dismissed by a judgment of the Superior Court which, being appealed to the Court of Queen's Bench[1], was affirmed by a majority judgment. A further appeal entered in this Court was dismissed at the issue of the hearing, the Court indicating that reasons would later be delivered.

It was conceded that the City adopted By-Law 2414 in the public interest and that the appellants never obtained nor sought to obtain a building permit for this emplacement which they had bought with the intention to sell. It may be added that the record does not disclose any subdivision, opening of streets or similar works having been done by the appellants with respect to their land.

At the hearing, it was common ground that the only issue was whether, as contended for by the appellants and

1 [1963] Que. Q.B. 839.

obviously denied by the respondent, the two Courts below erred in failing to find that appellants were, as a result of by-law 2414, deprived of any vested rights within the meaning of the term under para. 44(*a*) of art. 300 of the City Charter.

Article 300 of the Charter enables the City to make by-laws. As it stood, prior to the date of acquisition of appellants' emplacement, art. 44(*a*) thereof authorized the City:

> To regulate the kind of buildings that may be erected on certain streets, parts or sections of streets or on any land fronting on any public place or park; to compel the proprietors or constructors of buildings, hereafter erected, containing ten stories or more, to reserve an adequate space as a garage for the use of the occupants of such buildings; to determine at what distance from the line of the streets, public places or parks the houses shall be built, provided that such distance shall not be fixed at more than twenty-five feet from the said line, or to prohibit the construction, occupation and maintenance of factories, workshops, taverns, billiard-rooms, pigeon-hole rooms, livery-stables, butcher's stalls or other shops or similar places of business in the said streets, parts or sections of certain streets or on said land fronting on any public place or park, saving the indemnity, if any, payable to the proprietors, tenants or occupants of the buildings now built or being built or who have building permits, which indemnity shall be determined by three arbitrators, one to be appointed by the city, one by the proprietor, tenant or occupant interested and the third by the two former and, in default of agreement, by a judge of the Superior Court; and the city shall have the right to pass a by-law to compel every proprietor to have an opening made in the outer door of his house or houses, even those already built, to enable the postman to insert the mail;

The provisions of this section were replaced, on February 22, 1955, by the following:

> To classify buildings and establishments; to divide the municipality into zones, whose number, shape and area seem suitable; to regulate and restrict differently according to the location in such zones, parts or sections of certain zones or in certain streets, parts or sections of certain streets or at any place whatsoever, the use and occupation of lands, the kind, destination, occupation and use of buildings which may be erected as well as the maintenance, reconstruction, alteration, repair, enlargement, destination, occupation and use of buildings already erected, saving the indemnity, if any, payable to the owners, lessees or occupants, having vested rights, which indemnity must be determined by three arbitrators, one to be appointed by the city, one by the interested party and the third by the two former and, in default of agreement, by a judge of the Magistrate's Court, to prescribe the area of lots, the proportion thereof which may be occupied by the buildings, the number of parking units which are to be laid out, the space to be left between the buildings and between the buildings and the line of streets, lanes, public places or parks, to prohibit any construction, reconstruction, alteration, repair, destination, occupation and any enlargement and usage not in conformity, to have them cease and even provide for the demolition of the construction;

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The wording of the two texts differs in that the words ". . . saving the indemnity, if any, payable to the proprietors, tenants or occupants of the buildings now built or being built or who have building permits . . .", appearing in the former, have been replaced, in the latter, by the words ". . . saving the indemnity, if any, payable to the owners, lessees or occupants, having vested rights . . ." This difference, it was argued, evidences an intention of the Legislature to enlarge the group of persons entitled to an indemnity to all those whose vested rights are injuriously affected. With deference, I fail to appreciate the relevancy of this submission to solve the question in issue which is centred on the effect to be given to the expression "having vested rights" or, as it appears in the French version, "*ayant des droits acquis*". Whatever be generally the meaning of the term "vested rights" or "*droits acquis*", the true import, in art. 44(*a*), of the expression "having vested rights" or "*ayant des droits acquis*" cannot be ascertained adequately without regard to the context, the nature, object and purpose of the enactment in which it appears. In the context, this expression qualifies the words "owners, tenants or occupants". As held by Taschereau J., with the concurrence of Tremblay C.J. and Rivard J., the presence of this expression in the text would be superfluous had the Legislature considered sufficient for one to possess rights common to all "owners, tenants or occupants", to be entitled to an indemnity. The extent to which such rights, as those invoked by appellants in the circumstances of this case, are affected by legislation of a nature and having an object and purpose substantially similar to art. 44(*a*) has often been considered by the Courts. To admit appellants' claim to an indemnity would be disregarding virtually the general principles attending such legislation. These general principles were particularly formulated by the Judicial Committee of the Privy Council in *Toronto Corporation v. Roman Catholic Separate Schools Trustees*[1], and recently applied by this Court in *Canadian Petrofina Limited v. Martin and Ville de Saint-Lambert*[2].

Appellants' claim to an indemnity could not be entertained. And as above indicated, their appeal against the

[1] [1926] A.C. 81, [1925] 3 D.L.R. 880.
[2] [1959] S.C.R. 453, 18 D.L.R. (2d) 761.

dismissed with costs.

Appeal dismissed with costs.

Attorneys for the petitioners, appellants: Louis & Berger, Montreal.

Attorneys for the defendant, respondent: Parent, McDonald & Mercier, Montreal.

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