Supreme Court of Canada
Rogers Realty Co. v. City of Swift Current, (1918) 57 S.C.R. 534
Date: 1918-03-25

Rogers Realty Company (Plaintiff) Appellant;

and

The City of Swift Current (Defendant) Respondent.

1918: March 5; 1918: March 25.

Present: Sir Charles Fitzpatrick C.J. and Idington, Anglin and Brodeur JJ.

ON APPEAL FROM THE LOCAL GOVERNMENT BOARD OF SASKATCHEWAN.

Appeal—Jurisdiction—Assessment and taxation—"Supreme Court Act," R.S.C. 1906, s. 41.

An appeal lies to the Supreme Court of Canada under section 41 of the "Supreme Court Act" from the judgment of the Local Government Board of Saskatchewan sitting in appeal from the Court of Revision in respect of assessments for taxation purposes. Fitzpatrick C.J. *dubitante. Pearce* v. *Calgary* (54 Can. S.C.R. 1, 32 D.L.R. 790, 23 D.L.R. 296, 9 W.W.R. 195, 668), followed.

Judgment of the Local Government Board of Saskatchewan reversed, Brodeur J. dissenting.

APPEAL from the decision of the Local Government Board of the Province of Saskatchewan confirming the decision of the Court of Revision, in respect of assessment, for taxation purposes, of subdivided lots of land belonging to the appellant.

The material facts of the case are fully stated in the judgments now reported.

F. H. Chrysler K.C. for the appellant.

Harold Fisher for the respondent.

THE CHIEF JUSTICE.—I concur in the disposition of this appeal made by Mr. Justice Anglin.

I have, however, much reluctance in allowing the appeal because, firstly, I rather doubt our jurisdiction. *Montreal Street Railway Company* v. *City of Montreal*[1]; and, secondly, because the local authorities ought

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to be more competent to fix the value of the properties in question than I can assume to be.

[1] 41 Can. S.C.R. 427.

IDINGTON J.—I think this appeal should be allowed and the assessment of the lands in question put at $100 an acre, or the equivalent thereof for the lots which are said to be a tenth of an acre each.

The parties, it is said, agreed that the evidence taken in another appeal, by the Hudson Bay Company, should be read along with that taken in this. The only evidence directly taken in this case was that given by Mr. Reith, and he values the land in question at $75 to $100 per acre. The use of the evidence in the *Hudson Bay Case* being agreed to, suggests, as well as did the location on the map in evidence, that the land in each case was practically of about the same value. But it seemed to be as to either that as subdivisions into town lots they are for the present time worthless.

In regard to the other lands the assessor was examined and gave the following evidence:—

Q.—How did you arrive at the assessment of $350.00 per acre?

A.—We know of acreage being sold much in excess of 1350.00.

Q.—Then your witness stated it is valueless. Do you agree with that?

A.—I do, to a certain extent.

Q.—You do not think it could be sold at the present time? A. No.

Q.—Could you trade it for anything? A. I do not know.

Q.—You know nothing you could trade it for? A.—I do not know.

Q.—The nuisance ground occupies 40 acres? A.—Yes.

It is not difficult to understand from that evidence of the assessor, in regard to land which other evidence in the same appeal shewed was not good for much else than for subdivision, although not subdivided, that in making the assessment in question he had ignored the statute which ought to have bound him. I infer that if subdivided it would probably be more valuable

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in subdivisions than that in question in this case. When evidence was given, in regard to either property, of values some years ago, we cannot shut out from our minds the common

knowledge that such values, founded upon delusions that prevailed some years ago, exist no longer.

The statute imperatively requires that land shall be assessed at its fair actual value and buildings and improvements thereon at not more than 60% of their actual value. That statutory obligation clearly was not observed by the assessor, nor has it been observed by the Court of Revision or the Local Government Board.

Indeed it was not argued that the evidence would warrant the finding. It was argued, however, that inasmuch as under section 415, s.s. 11, of the city's Act, it was provided as follows:—

> The board may, of its own motion, revise the assessment of the city generally, or of any part thereof, or of any individual properties in respect of which no notice of appeal has been given, and for such purpose it may set a day or days for the hearing and adjourn the same from time to time, and may cause such notices to be given and such parties to be served as may be deemed expedient.

that it was not competent for us to interfere and that the judgment of the board must be accepted as infallible notwithstanding the evidence. I do not so read the statute. That section certainly gives the board unusual powers, but it was not sitting in pursuance of the sub-section just quoted, which relates to causes in which no notice of appeal has been given and requires it to give notice of the sitting of such court, and the parties concerned to be served. That is not the proceeding that is in question here. All that is in question here is a judgment of that board sitting in appeal from the Court of Revision.

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It is quite competent for the legislature, if it see fit, to treat such a board, when discharging other duties than its appellate ones, as infallible, as section 11 seems to contemplate according to the argument presented.

The legislature, however, has not seen fit to attach that weight of infallibility to the board in question or to attach any importance whatever to an inspection or judgment based upon an inspection of the premises.

The powers given for the board to revise of its own motion, cannot be made to imply more than giving it jurisdiction to initiate a revision of its own.

Reason and common sense suggest that when it is required to give notice to those concerned of its intention to proceed to such a revision, that it must hold a sitting and hear evidence just as any other tribunal. That it has not done in any such capacity as indicated by the sub-section.

All it did pretend to do was to hear the appeal from the Court of Revision upon which there is only the one witness's evidence which bound, or should have bound, the board appealed from, as it binds us.

This is the fourth appeal of this kind of property, once valuable in booming times, now greatly depreciated, and in each instance heretofore the value placed by the witness has been taken for our guide. I see no reason for departing from the mode of disposing of an appeal which has been used heretofore.

The respondent should bear the costs of this appeal.

ANGLIN J.—Our jurisdiction to entertain this appeal under section 41 of the "Supreme Court Act" is unquestionable. Our duty, if the evidence satisfies us that the assessment appealed against exceeds the "fair actual value" or the "true value" of the property to a "substantial" extent (stats. of Sask., 1915, ch. 16,

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s. 387), is to allow the appeal and to reduce the assessment to such "fair actual value" as disclosed by the evidence. *Pearce* v. *Calgary*[2].

We have not the advantage of any statement of the grounds on, or the reasons for, which the Local Government Board affirmed the assessment of the appellants' Rosemount property. We are informed, only by the the certificate of the city clerk, that

> the members of the Board made a personal inspection of the property and also made personal inspection of adjoining properties and personal inspection of various other properties throughout the city of Swift Current and compared the assessment upon such properties with the assessment in question.

We can merely surmise to what extent the conclusion reached was influenced by these inspections and comparisons.

[2] 54 Can. S.C.R. 1; 32 D.L.R. 790.

The right of the board sitting as an appellate tribunal, in the absence of statutory provision therefor, to take a view has been challenged. It is at least questionable. There is nothing to indicate that the special jurisdiction conferred by s.s. 11 of section 415 of the City Act (stats. of Sask. 1915, c. 16) was exercised by the board. In the case of "individual properties" that jurisdiction appears to be confined to those

> in respect of which no notice of appeal has been given.

But, making every possible allowance for the effect of the board's inspection of the property (assuming it to have been rightly made) and for the facts that the weight to be attached to the evidence in regard to the Hudson's Bay Company's property (introduced by consent) is materially lessened by the circumstance that the property now under consideration is in immediate proximity to the city's nuisance ground, that the

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original assessment was supported by the oath of the assessor, and that only one witness was called to give evidence in regard to the value of the Rosemount subdivision, I am nevertheless satisfied that the assessment of the latter as building lots at an average value of about $120 apiece—a valuation approximating $1,200 an acre—was improper and grossly exceeds its true or fair actual value.

The evidence of J. K. Reith, a real estate dealer of some years' experience in Swift Current, who was the sole witness that spoke as to Rosemount, was that

> there is not any lot in the whole subdivision worth $25 * * *; the only thing you could use it for is farm land,

and he placed its value at $75 to $100 per acre. This witness's testimony was not affected by his cross-examination; and the city chose to leave it uncontradicted. The assessor, in giving evidence in regard to the assessment of the Hudson's Bay Company's property, which he had placed at $350 per acre, said that he agreed to a certain extent with a witness called for the appellants in that case who had stated that that property was valueless. Other witnesses had valued it at from $25 to $30 and from $25 to $50 an acre—none at any higher figure. Mr. Reith added that Rosemount "is not any better" than the Hudson's Bay quarter.

It must always be extremely unsatisfactory for an appellate court, lacking the local knowledge, the familiarity with assessment work and the opportunity of personal inspection

possessed by a local tribunal, to attempt to revise its valuations on the mere record of oral testimony of witnesses called before it. While such a duty is imposed upon us, however, we must discharge it as best we can.

In the present case I am satisfied that the assessment

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is not merely substantially but grossly excessive. It would almost appear that the board, regarding the maintenance of "a fair and just proportion" between the assessment of the land in question and

> the value at which lands in the immediate vicinity of the lands in question are assessed

as the dominant requirement of the statute, had subordinated, if it did not ignore, the imperative provision that

> land shall be assessed at its fair actual value.

The maintenance of "a fair and just proportion" between it and other assessments in the vicinity becomes material only where there is not a substantial difference between the amount of the assessment in question and the "true value" of the property. The only evidence of "fair actual value" or "true value" before us is "from $75 to $100 per acre."

I would allow the appeal and reduce the assessment to $100 per acre.

BRODEUR J. (dissenting)—This is an appeal from the judgment of the local Government Board of the Province of Saskatchewan against the assessment of subdivided lots of land known as Rosemount in the City of Swift Current. The judgment of the Local Government Board had confirmed the decision of the assessor of the municipality and of the Court of Revision.

The Local Government Board was instituted a few years ago for the purpose of controlling the municipal authorities concerning the raising of moneys by way of debentures, to supervise the expenditure of moneys borrowed, to revise the assessment of municipalities and to hear assessment appeals. Their powers are very extensive, since, as regards assessments,

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the Board may, of their own motion, revise the assessment of a city, even when there is no notice of appeal and no complaint (Sask. statute 1915, ch. 16, sec. 415, s.s. 11). It is declared by the Act that the decision of the board shall be final and conclusive in every case adjudicated upon (sub-section 15).

The evidence that we have in this case is very meagre and we have no reasons of judgment either from the Court of Revision or from the Local Government Board. It is common ground, however, that members of the board have made a personal inspection not only of the properties at issue but also of adjoining properties and various other lands throughout the city of Swift Current and have compared the assessment upon such properties with the assessment in question in this case. The certificate of the city clerk states that in the opinion of the board the properties in question had been given their fair actual value and it bore a fair and just proportion to the value at which lands in the immediate vicinity of the land in question was assessed.

In those circumstances, it seems to me that we could not very easily interfere with the views expressed by the board, since the members thereof had an opportunity of visiting the land and forming a fair opinion upon the assessment of the properties in the municipality.

It may be that at the present moment those properties could not be sold for the price at which they have been assessed because we are at a time when money is very scarce and when it is likely very hard to dispose of properties. But this is only temporary, and on that point the board is in a far better position to determine the actual value of the property than we are ourselves.

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I am of opinion then that the judgment appealed from should be maintained with costs.

Appeal allowed with costs.

Solicitors for the appellant: Begg & Hayes.

Solicitor for the respondent: C. E. Bothwell.