Supreme Court of Canada
Town of Montmagny v. Letourneau, (1917) 55 S.C.R. 543
Date: 1917-06-22

The Town of Montmagny (Plaintiff) Appellant;

and

Ludger Letourneau (Defendant) Respondent.

1917: May 30; 1917: June 22.

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

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

Expropriation—Arbitrators—Excess of jurisdiction—Award final and without appeal—Compensation—Building lots—Articles 5790 to 5800 R.S.Q.

The appellant, by means of expropriation proceedings, obtained a servitude over lands of respondent, and, under the authority of articles 5790 to 5800 R.S.Q., an arbitration took place to decide the amount of compensation payable to respondent. Prior to expropriation, the respondent laid out as building lots part of his lands, which were devoted mainly to agricultural uses. Article 5797 R.S.Q. provides that the award of the arbitrators should be final and without appeal. Appellant took an action to set aside the award of the arbitrators.

Held, per Fitzpatrick C.J. Duff and Anglin JJ.—The arbitrators were within the scope of their jurisdiction in valuing the lands of respondent as town building lots instead of as agricultural property, as the decision, as to whether the lands had a present marketable value as town lots or not, was a question of fact upon which it was the duty of the arbitrators to pass.

Per Duff J. Upon the evidence of the arbitrators, it has not been proven that they had based their award upon an appraisement of something which was not the thing they were authorized to appraise, which they would have done if they had taken, as their starting point, not the value of the property as of the date of the expropriation, including the value as of that date of its economic potentialities, but the value as of a later date.

Per Duff J.—An award, being a decision of one having limited authority, whether given by agreement of the parties or by statute, is *pro tanto* void if the arbitrator appraises something he was riot directed to appraise and void altogether if that part which is void cannot be severed from the rest, it being immaterial whether the arbitrator has acted by mistake or by design.

Appeal dismissed, Davies and Idington JJ. dissenting.

[Page 544]

APPEAL from the judgment of the Court of King's Bench, appeal side, reversing the judgment of Flynn J. in the Superior Court for the district of Montmagny, which maintained the action of appellant and quashed the award as granting an excessive indemnity.

The circumstances of the case are stated in the judgments now reported.

L. G. Belley K.C. for the appellant.

Maurice Rousseau K.C. for the respondent.

THE CHIEF JUSTICE.—The appellant, by means of duly authorized expropriation proceedings, had obtained a servitude over lands of the respondent for laying and maintaining a pipe line. In due course, an arbitration took place to decide the amount of compensation payable to the respondent. In these proceedings, the appellant is resisting payment of the amount awarded.

Prior to the expropriation, the respondent laid out part of his lands, which were devoted mainly to agricultural uses, as building lots with a view, as is claimed by the appellant, of enhancing the compensation which he could claim at the arbitration.

It is unnecessary to consider in particular what he did, with what purpose or with what effect, for it must be conceeded that a man has a perfect right to do what he pleases with his own property; it suffices to say that there is in the case no suggestion of anything fraudulently done in subdividing the property or in any other respect in connection with the arbitration

The arbitration proceedings were admittedly regular. The appellants knew the basis on which the arbitrators were proceeding to make their valuation and acquiesced therein by calling no evidence to shew that it was erroneous.

[Page 545]

Article 5797 of the R.S.Q. provides that the award of the arbitrators shall be final and without appeal.

Now, on the ground that the amount awarded is excessive and that the arbitrators proceeded on a wrong basis in estimating the compensation, the appellant is inviting the court to re-open the whole question and has put the respondent, whose property is forcibly expropriated, to all this enormous expense of legal proceedings carried from court to court in an attempt to avoid payment of part of an award of some $4,000.

It must be conceded that we cannot disturb the award merely because we deem the compensation allowed to be too great. To do so would obviously be to entertain the prohibited appeal. The appellant seeks to escape this difficulty by suggesting that the

compensation was assessed on a wrong basis—*i.e.,* on the footing that the lands affected should be valued as town building lots instead of as agricultural property—and that the arbitrators thereby exceeded their jurisdiction. But whether the land had a marketable value as town building lots or had no such value and was available only for farming or market gardening purposes was certainly a question of fact upon which it was the duty of the arbitrators to pass. It is very difficult to appreciate the contention that, in doing so, they exceeded their jurisdiction. To review their determination of this issue would be to entertain the appeal which the statute excludes, and in reality to interfere with their decision as to the value of the land injuriously affected, which is of course one of the chief elements in fixing the amount of the damage for which the owner is entitled to be compensated.

I am glad to think that there is no ground on which the court is in any way justified in entertaining

[Page 546]

such a claim. The appeal should be dismissed with costs.

DAVIES J. (dissenting)—I concur with the reasons stated by Cross J. (dissenting) in the appeal court of King's Bench, Quebec, for dismissing the appeal to that court, and would therefore allow the appeal and confirm the judgment of the Superior Court.

IDINGTON J. (dissenting)—I think, for the reasons assigned by Mr. Justice Cross in his dissenting opinion in the court of appeal, that this appeal should be allowed with costs and the judgment of the learned trial judge be restored.

The latter judge has assigned some further cogent reasons, with some at least of which I incline to agree, in support of his judgment, but I am unable without further examination, which in the view I take is unnecessary, to say whether or not I can agree in all the reasons so assigned. For example, the question of the arbitrators disregarding the benefit to be derived by respondent from the projected work in arriving at their conclusion, is one of those considerations which would require perusal of the whole evidence owing to the fact that the point was not much pressed and fully argued. Thorough examination of the evidence may support the position that the board disregarded its duty in this behalf or might lead to the conclusion that the appellant did not bring the necessary evidence before the board. However, one good ground, as it seems to me, being sufficiently apparent

requiring a reversal of the judgment appealed from, it is unnecessary to labour further I think.

DUFF J.—The proceedings of the municipality were taken under the authority of articles 5790 to

[Page 547]

5800 R.S.Q. The principles governing the determination of compensation under these articles are concisely explained in the judgment of Lord Buckmaster, speaking for the Judicial Committee in *Fraser* v. *Fraserville*[1], at p. 194:—

> The principles which regulate the fixing of compensation of lands compulsorily acquired have been the subject of many decisions, and among the most recent are those of *In re Lucas and Chesterfield Gas & Water Board*[2]; *Cedars Rapids Manufacturing & Power Co.* v. *Lacoste*[3]; and *Sidney* v. *North Eastern Rly. Co.*[4]. The principles of those cases are carefully and correctly considered in the judgments the subject of appeal, and the substance of them is this: that the value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired, the question of what is the scheme being a question of fact for the arbitrator in each case.

Their Lordships held that as the arbitrator, instead of determining the value of the property to the seller, had arrived at the amount of compensation awarded by fixing its value to the persons buying the award could not be upheld.

Their Lordships add:—

> That it is plain from the language of the statute making the award of the arbitrators final and without appeal, that, apart from evidence establishing that the arbitrators had exceeded their jurisdiction, their award could not be disputed.

On behalf of the municipality, it is contended that the arbitrators, whose award is now the subject of consideration, proceeded upon an erroneous basis, since, in estimating compensation to be awarded to the respondent, they took, as their starting point, not the value of the property affected at the date of the expropriation including the value as of that date of its economic potentialities, but the value as of a later

[Page 548]

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[1] [1917] 2 A.C. 187.
[2] [1909] 1 K.B. 16.
[3] [1914] A.C. 569.
[4] [1914] 3 K.B. 629.

date. It is argued that this is proved by the evidence of the arbitrators themselves; and, if this were established, it would follow that, the arbitrators having based their award upon an appraisement of something which was not the thing they were authorized to appraise, the appellant municipality ought to succeed. The majority of the court below appear to have held that even such a departure from the principles of compensation prescribed by law would not vitiate the award. The judgment of the Judicial Committee, in the case above referred to, is so apt an illustration of the principles on which the courts have always acted in setting aside the awards of arbitrators in compensation cases that it is unnecessary to refer to the long line of authorities establishing that, since an award is a decision of one having limited authority, whether given by agreement of the parties or by statute, the award is *pro tanto* void if the limited authority has not been pursued and the arbitrator has appraised something he was not directed to appraise and void altogether if that part which is void cannot be severed from the rest; that it is immaterial whether the arbitrator in such a case has acted by mistake or by design and that the fact that his authority has not been pursued may be proved by the testimony of the arbitrator himself, *Buccleuch, Duke of,* v. *Metropolitan Board of Works*[5]; *Falkingham* v. *Victorian Railways Commissioner*[6].

It is sometimes difficult, very difficult indeed, to determine where an arbitrator has made a mistake of law or of fact, whether the mistake amounts to such a departure from authority as to invalidate the award.

[Page 549]

The question before us on this appeal is whether the opinion of Mr. Justice Cross in the court below is right, that the arbitrators have shewn, by their own evidence, that they exceeded their authority. My conclusion is that excess of jurisdiction is not proved.

In *Falkingham* v. *Victorian Railways Commissioner*[7], at p. 464, Lord Davey, speaking for the Judicial Committee, uses these words:—

> Where * * * there is jurisdiction to make an award and the question is one of a possible excess of jurisdiction, the rule (that the onus rests upon those who allege that an inferior tribunal has acted within its jurisdiction) has no application. In such a case the award can only be impeached by shewing that the arbitrator did in fact exceed his jurisdiction.

[5] L.R. 5 Ex. 221; L.R. 5 H.L. 418.
[6] [1900] A.C. 452.
[7] [1900] A.C. 452.

While the evidence of the arbitrators cannot be said to be wholly satisfactory, I think it is not inconsistent with the hypothesis that what they really had in view in estimating the compensation to be made was value as of the date of expropriation of the economic potentialities of the land as capable of subdivision.

For these reasons I should dismiss the appeal with costs.

ANGLIN J.—I concur in the judgment of my Lord the Chief Justice.

Appeal dismissed with costs.

Solicitor for the appellant: L. G. Belley.

Solicitor for the respondent: Maurice Rousseau.