THE SISTERS OF CHARITY OF PROVIDENCE IN BRITISH COLUMBIA..... APPELLANTS;

1910
*Oct. 11, 12.
*Nov 21.

AND

THE CITY OF VANCOUVER.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA.

Municipal corporation—Assessment and taxes—Exemption from taxation—Board of Revision—Judicial functions—Administrative powers — Construction of statute — "Vancouver Incorporation Act," 64 V. c. 54, s. 46, s.-s. 3.

The "Vancouver Incorporation Act," 64 Vict. ch. 54 (B.C.), by subsection 3 of section 46, provides that "the buildings and grounds of and attached to and belonging to * * * any incorporated seminary of learning, public hospital, or any incorporated charitable institution, whether vested in trustees or otherwise, so long as such buildings and grounds are actually used and occupied by such institution, or if unoccupied, but not if otherwise used or occupied; provided, that such grounds shall not exceed in extent the amount actually necessary for the requirements of the institution. The question as to what amount of land is necessary shall be decided by the Court of Revision, whose decision shall be final."

Held, per Davies, Duff and Anglin JJ., that the functions in respect of the limitation of exemptions from taxation so vested in the Court of Revision are quasi-judicial and must be exercised in each case with respect to that case alone; it is not vested with power to lay down a general rule based solely upon general considerations.

Per Idington J.—That the provision in question was merely a delegation of a legislative or administrative power, probably carrying with it a duty, but in no manner implying the discharge of a judicial duty subject to review or supervision.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

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In proceedings, by certiorari, to remove a decision of the Court of Revision, the evidence adduced in support of the contention that the court had failed to dispose of the question in a proper manner consisted merely of a minute of its proceedings whereby it was resolved "that all charitable institutions mentioned in sub-section 3 of section 46 of 'Vancouver Incorporation Act' be exempted from taxation to the extent of the area occupied by the buildings thereon and an additional amount of land equal to 25 per cent. of the area, and that the assessment roll for 1900, as amended, be confirmed."

Held, affirming the judgment appealed from (15 B.C. Rep. 344), that this minute, in the absence of further evidence, was not incompatible with the view that the Court of Revision had examined each particular case before deciding to act in the sense of the minute and that it would be a proper direction in each individual case.

APPEAL from the judgment of the Court of Appeal for British Columbia(1), reversing the judgment by Morrison J. at the trial, and setting aside his order directing that a writ of certiorari should issue to remove a decision of the Court of Revision of the City of Vancouver.

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

Lafleur K.C. for the appellants.

Craig for the respondent.

THE CHIEF JUSTICE.—I agree that this appeal should be dismissed with costs.

DAVIES J. agreed with Duff J.

IDINGTON J.—The respondent was incorporated and was governed by a special charter contained in 64 Vict. ch. 54, of British Columbia.

(1) 15 B.C. Rep. 344.

It provides for the assessment being made in the year preceding that for which it is to become the basis for levying rates to meet the expenses of the city.

The duty is imposed on each owner or occupant of ratable property to give all information and if required by the assessor to deliver a written statement duly signed containing all the particulars required for the assessment roll.

It is the duty of the assessor to enter all ratable property at its cash value estimating separately the improvements and the land.

The City Council

> may by by-law exempt from taxation, wholly or in part, any improvements, erections and buildings erected on any land within the city, notwithstanding that they may be part of the real estate.

The next section, 46, under the heading of "Exemptions," declares

> all lands, real property, improvements thereon, machinery and plant being fixtures therein and thereon in the city shall be liable to taxation subject

to exemptions specified in some five sub-sections.

Of these sub-sections, the third specifies a great variety of educational or charitable institutions of whose buildings and grounds not otherwise used than for the purposes thereof, are declared exempt

> provided, that such grounds shall not exceed in extent the amount actually necessary for the requirements of the institution. The question as to what amount of land is necessary shall be decided by the Court of Revision, whose decision shall be final.

Under the heading "Court of Revision" there appear a number of sections dealing with the functions of that body. The first of these is section 47, as follows:

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47. The assessment roll of the city shall be annually revised, equalized and corrected by the council sitting as a Court of Revision, who may hold or adjourn the sittings of the Court of Revision as a majority of the members present may determine.

The next section provides for the council appointing a "time and place for the sitting of the Court of Revision," which is composed of the entire council,

for hearing all complaints against the assessment as made by the assessor.

The sections immediately following this are directed to the form of notice of appeal, the power entitled to give same, the ground thereof and the mode of procedure to be adopted.

It does not appear to me that there is either in these sections or in the later one providing for appeals to a judge, any right of appeal given to bodies or persons such as appellants herein, to make an appeal relative to the question of how the Court of Revision may have discharged the duty assigned to it by the sentence quoted above from sub-section 3 of section 46.

As illustrative of the scope and purpose of the Act I may refer to the power given by section 45, enabling the council to exempt buildings or a percentage of improvements from taxation and provision which is furnished after all this by section 54, for the members of the council constituting the Court of Revision equalizing the assessed value of land and improvements.

These powers are given in such terms as to indicate it is in one class of cases to be exercised upon an originating motion in the court and merely by a majority of all the members expressing their opinion, and in another class of cases without any judicial examination by way of hearing evidence or parties though in some cases upon complaint.

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Then section 55 declares the roll as revised or confirmed and passed by the Court of Revision

> shall, except in so far as the same may be further amended on an appeal to a judge of the Supreme Court, be valid and bind all parties, etc.

The appeal given to the judge as thus anticipated does not seem to apply to any such case as the one appellant raises, but is confined

> to the question of whether the assessment in respect of which the appeal is taken is or is not equal and ratable with the assessment of other similar property in the having equal advantage of situation against the assessment of which no appeal has been taken.

The first part of this is wide enough to cover such a class of subjects as that of the property of appellant as compared with others in like class, but these latter words seem to render it impossible to say an appeal would lie in either such a case as this or anything arising under the equalizing powers under section 54 above referred to.

I present these various provisions I have referred to in order to illuminate the character and enable us to correctly understand the scope and purpose of the legislation in which is found the peculiar wording of a sentence upon which this appeal turns.

In short there is nothing in the language imposing the duty and giving the power to the Court of Revision which it has exercised and is now in question, that necessarily constitutes the duty one of a judicial character.

It is merely a delegation of a legislative or administrative power probably carrying with it a duty, but in neither way one can look at it implying the discharge of a judicial duty subject to review or supervision.

An omission to exercise the power would leave only

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a limited exemption, and who could complain ? The assessor as in duty bound assesses what he deems ratable. If any error appears to have been made by him within the sphere of his authority, that might be appealed against on the ground of want of ratability. But that involves another view I will deal with presently. It has no relation to the duty of the Court of Revision relative to that which is *primâ facie* ratable, and as to which the assessor's only duty is to assess.

The term "Court of Revision" in this connection means no more nor less than the council, for it is the same body under another name.

The statute by using this alternative name beyond doubt impliedly attaches to the execution of the power and discharge of implied duty a limit of time for its exercise; and in so doing also gives it a chance of being better exercised than if given at large during the entire year for which the council as such endures.

It seems to me appellant's claim herein is thus in this last suggestion entirely answered, for whether legislative, judicial or administrative, the time has long gone by for its exercise.

The time for its exercise had passed when these proceedings were had.

If the Court of Revision could ever have been enjoined or controlled in any way, it should in the very nature of its constitution have been exercised before it was discharged by the mere operation of the statute. Its function ceased with the certifying by the court of the roll as completed.

If the act done was merely legislative or administrative in its character, the name of the body doing it could not change that character.

The word "court" is a good old English term of

such wide import as to cover as the context in which it appears may indicate duties of these several and respective characters and is of no peculiar signification in this connection.

Again let us see what is to be done. It is merely a question of policy that has to be decided.

The buildings and lands to be occupied thereby are exempt, and hence not ratable and presumably were not rated.

Whether the city can or ought to afford more than this absolute necessity in law is a matter respecting which men might well differ in opinion.

Where to draw the line is left to the discretion—I think, the absolute, unqualified discretion — of a majority of the council sitting as a court of revision.

If an appeal from that discretion had been given, a different inference might have been drawn.

It might have been well argued in such case that the act was to be a judicial one.

But beyond all these things assuming the power exercised by the Court of Revision a judicial act and assuming (a pretty strong assumption upon this statute) a writ of certiorari ever could run to bring up the record of a court of revision constituted for working out the provisions of legislation no way dependent upon its being the development or amended method of imposing rates by or through a court, such as the Courts of Sessions, of which instances can be found, is there anything in this case that might warrant interference ?

I, for the present, put aside all the considerations tending to shew it was a mere exercise of legislative or administrative power and duty.

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I will then assume that the question of the assessor's rating is subject to be complained of on the ground that he has not properly discharged his duty, but omitted to give due exemption to the extent *primâ facie* claimable.

What happened? An appeal was taken as if against the assessor's act.

Counsel was heard for the appellant. No witnesses were tendered. No claim was made here that such should be heard and then a refusal to hear them. In such latter event I could understand how the court (discharging for the moment a judicial duty) might be said to be acting without jurisdiction.

Nothing of the kind appears. Courts of revision are not bound of their own motion to call evidence. They may be entitled when the assessor's action is thus presented incidentally to hearing complaint against his ruling, to use their own judgment as men of affairs and often do so, as was done here to reduce the assessment.

Under this statute they are by section 54 expressly given such power quite independently of the general power.

Now what this court did, when appellant failed to give evidence or claim to do so, was to assume, as entitled to assume, the assessor's rating presumably correct and quite well warranted by the statute, and then to exercise their power to reduce. It was either an exercise of the express power to exempt or fix exemption or of power, incidental to an appeal, to reduce. I think it was the former.

The strange complaint is made that they coupled all institutions of the classes the statute enables them to relieve together, and made a uniform reduction on a percentage basis.

What is wrong with that ? The court could have dismissed the complaint as unsupported by evidence.

The court might then, so far as the law goes, have ignored the appellant's complaint and in other cases upon evidence, have given more ample exemption. Yet what ground of complaint could appellant have ?

The judgment and act of the assessor stood, and stands yet (subject to the power exercised not by way of determining the appeal, but executing their special power), by every presumption of law as correct.

The sole question possible to be raised by this proceeding, if it lie at all, which I more than doubt, is whether jurisdiction existed or not.

It would be hard, I think, to find a clearer case of acting within jurisdiction.

Moreover, the rules of British Columbia require that any case of certiorari the objection, whether of omission or mistake to be relied upon, must be specified in the order for the issue of the writ.

None appears on this order.

The appeal should be dismissed with costs.

DUFF J.—Under section 46, sub-section 3, chapter 54 of 64 Vict. (B.C.), the appellants are, I think, *primâ facie* exempt from taxation in respect of "the buildings and grounds attached and belonging to" their institution in so far as such buildings and grounds are actually used and occupied by them for the purposes of that institution. The same sub-section confers upon the Court of Revision the power to limit this exemption. It is quite clear, I think, that the function thus vested in the Court of Revision is *quasi judicial* and must be exercised in each case with respect to the merits of that case alone; no administrative authority is con-

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ferred upon the Court of Revision empowering it to lay down a general rule based only upon general considerations. The principal contention of the appellants is that in this case the Court of Revision did not apply itself to the merits, but acted upon some such self-imposed general rule.

I express no opinion upon the question whether had the appellants succeeded in establishing this, the substance of their contention, they might still have been successfully met by the objection that the case is not a proper one for certiorari; they fail, in my opinion, because on the whole of the evidence before us we are not entitled to conclude that the Court of Revision acted otherwise than in accordance with its legal duty. There is in evidence a minute of that body in these words:

> That all charitable institutions mentioned in sub-section 3 of section 46 of "Vancouver Incorporation Act" be exempted from taxation to the extent of the area occupied by the buildings thereon and an additional amount of land equal to 25 per cent. of the area, and that the assessment roll for 1900, as amended, be confirmed.
>
> And that the court then adjourned *sine die*.

And it is upon this minute that the appellants chiefly rely in support of the contention just indicated. The existence of this minute does not appear to me to be conclusive. In itself it is not incompatible with the view that the Court of Revision had examined each particular case falling within the enactment before deciding to act in the sense of this memorandum. We have no evidence as to the number of these institutions in Vancouver, and it is quite conceivable that in respect of all of them there is such a similarity of relevant circumstances that the direction contained in the minute would be a reasonable and proper direction in each individual case. We are bound, of course, to assume that this municipal body did, pursuant to its

duty, examine each case until there is some solid reason for otherwise deciding. The presumption that they did so is strengthened by the circumstance that the appellants' solicitor being present on the occasion on which the appellants' case was considered, took no objection to the mode of procedure, and further by the additional circumstance that in his affidavit he refrains from saying that the case of the appellants was not discussed or considered on its own merits.

I should not wish to be understood as undervaluing in the least degree the importance of a proper observance by courts of revision and the like bodies of the broad rules of judicial conduct when exercising judicial functions; but it is just as important that misconduct should not be imputed to such bodies upon evidence so meagre and equivocal as that upon which this proceeding is based. I have the less hesitation in dismissing the appeal in that the material before us appears to indicate that if the charge of misconduct be well founded there was palpable abuse of the statutory authority vested in the council. Abuse is only one form of excess; and whether the circumstances of this case do or do not now preclude these appellants from bringing forward fresh evidence in another proceeding—there seems to be no good reason for thinking that at an earlier stage (assuming the assessment to have been, on the true facts, vitiated by the council's alleged *ultra vires* proceeding) they were not without a complete and satisfactory remedy.

ANGLIN J. agreed with Duff J.

Appeal dismissed with costs.

Solicitors for the appellants: *McPhillips & Tiffin.*
Solicitor for the respondent: *J. G. Hay.*