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COURT OF APPEAL
MISC. NO. 7/63.

Before: The Hon. Mr. Justice Lewis
The Hon. Mr. Justice Duffus
The Hon. Mr. Justice Henriques.

Messrs. K. Rattray and A. C. Mundell for Appellant
Mr. Norman Hill for Respondent.

19th July 1963

COMMISSIONER OF VALUATIONS vs. CONRAD HALL

JUDGMENT DELIVERED BY THE HON. MR. JUSTICE LEWIS

This appeal raises the questions whether and to what extent it is permissible, in valuations made under the Land Valuation Law No. 73 of 1956, to take into account any potential use for which the land may be capable of being developed. The land with which the case is concerned is Allspice Grove, some 31 acres and 19 poles in extent situate on the sea coast in the parish of Portland, in the Boston district about 9 miles from Port Antonio and belonging to the respondent. At the prescribed date of valuation, 1st of October, 1959, it was planted in coconuts and pimento, both in poor condition. In 1949 the respondent bought it from the late Errol Flynn for £250, and when in February 1960 the Commissioner of Valuation assessed it at £12,000, he promptly filed his objection. His ground was that the valuation was too high as the land has a high rock-bound coast with no beach or access thereto, that 50% of the land is honeycomb rocks and of no value for tourist purposes, and the remainder only suitable for coconuts. He suggested a valuation of £300. The Commissioner disallowed his objection and he asked for a review by the Valuation Board under Section 22 of the Law. His appeal was heard by the Board which, after hearing evidence and visiting the locus, on 29th August, 1962, reduced the valuation to £4,500 and awarded him his costs. Against this decision the Commissioner now appeals.

Before the Board, the respondent's case was that the nature of his land was such that it had very little value. He said -

" I would not regard it as suitable for growing coconuts.
" I would not regard it suitable for building because that
" land full of sea balls. Plenty of them right under the
" land. Sea balls extend right up to next corner; about
" ¾ of land in sea balls. If you go there you hear the
" sea rolling under the land. Coming right up to parochial
" track sea comes right up there. The 31 acres a suspended
" piece of rock overhanging the sea. I have lost several
" beasts there, dropped into holes. "

His witnesses, Clarence A. Shelley and Clarence Farr, auctioneers and valuers of five and seven years standing, respectively, did not entirely support him. They considered that some five to eight acres of the sea coast was honeycomb rock with no soil and of little value. The rest of the land they considered not good agricultural land but suitable for coconuts and for pimento and limes. Shelley, who for fifteen years has been manager of the nearby San San residential development, considered it unsuitable for residential development, though inexpensive buildings might be erected. His reasons were that the land is too level, without any fine building sites, the coastline too rocky and without access to the sea, no sandy beach, expensive to develop because of absence of soil and inadequacy of water supply in the district. Farr, however, admitted that a low income residential development might be successful, though he thought the land would be hard to sell.

Shelley and Farr both valued the land as suitable only for goats and quarrying. Shelley fixed the unimproved value at £1,850, with improvements at £3,145. Farr thought that unimproved it was worth £1,800 to £2,000, improved £3,000. Neither witness took into account any potentiality for use as building land.

The Commissioner's case was that the existing use of the land was not its best use, that it had a potential use as

building land and was suitable for subdivision as a middle income residential development, and that it should be valued accordingly. His witness, Clifford Hemmings, a qualified construction engineer and a valuer of five years experience, gave evidence to this effect. He said that he had arrived at his valuation of £12,000 by taking account of recent sales of lands in the area which he considered comparable to Allspice Grove both in situation and in topography, including a parcel of some eight acres of coast land (not part of the land in dispute) sold by the respondent in January 1960 for £30,000. By using another method he had reached the same figure of £12,000. This involved imposing upon the land a notional development by subdivision into 41 residential lots of varying sizes. He had made enquiries, he said, and found that there was a general demand in the area for land for residential purposes and he thought that such a development of Allspice Grove would be patronized by people from all over Jamaica. The sale of these lots, he estimated, would yield a gross revenue of £34,600. From this sum, expenses and profits estimated at £13,100 and £6,000, respectively, were deducted leaving a net sum of £15,500. It being assumed that development would take a year and sale and collection of purchase money a further three years, this sum was discounted at 8%, the result, approximately £12,000, representing the present value of the land as land is suitable for a residential subdivisional development.

The Board's findings of fact, set out in their Reasons for Decision dated 12th November, 1962, may be summarized as follows:-

1. The sea coast, 2,200 feet long, consists of cliffs and rocks 20' to 40' high.
2. About five acres of the sea coast land are honeycomb.
3. The rest of the land contains little depth of soil and abounds in stones and rocks.
4. The yield from cultivation is poor and the trees are in poor condition.
5. The land is situate in an area where at the date of

the valuation residential and other developments existed or were contemplated or taking place.

6. No rapid development was taking place in the area.

7. Land sales were slow.

Although there is no express finding to this effect, it is a fair deduction from findings 2, 3 and 4 above, that the land is not good agricultural land. There is also no finding as to its potentiality for use as building land, but in this Court Mr. Hill, who appeared for the Resident, conceded that the land does possess such potentiality and is physically capable of subdivision for purposes of residential development.

This admission is in my view justified by the evidence of Shelley and Farr.

The Board rejected the valuations of Shelley and Farr as too low, being based upon suitability of the land for use only as a goat run or quarry. It is not disputed that they were right in so doing for these valuations did not even take into account its existing agricultural use.

The Board also rejected Hemmings' valuation of £12,000. In so far as this valuation was reached on the basis of comparable sales, the Board, while recognising this as a valid method of valuation, found themselves unable to derive any assistance from the sales deposed to. For so holding they gave three reasons: first, in some cases, that he found the land not truly comparable; secondly, in all cases the prices represented the improved value of the land sold and no evidence was led dissecting the sales so as to enable the Board to arrive at unimproved values which could be used by way of comparison; thirdly, they considered the prices inflated because the lands were bought by or on behalf of foreigners for speculative or investment purposes. It may be useful to say a word about the second of these reasons.

It has long been recognised that an important factor to be taken into consideration in valuing land is the price at which land in the neighbourhood is being sold voluntarily, and it is usual, wherever possible, for evidence of such sales to be led. The sales must, however, be of lands which are comparable,

that is, so similar in their situation, relative position, and other circumstances bearing on their value, as to make the sale of them evidence which would properly guide the Board in estimating the value of the land in question. Further, where the value which the Board has to determine is the unimproved value of the land, it must be shown that the prices paid are in respect of the unimproved value of the lands sold, or, where that is not the case, the sales must be dissected to enable the Court to arrive at the unimproved values of the lands sold. The price of land with its existing improvements cannot be a guide to the unimproved value of the land in question unless it is known to what extent the price has been affected by the existence of these improvements. See Collins, The Valuation of Property Compensation and Land Tax, 3rd Edition, pages 59, 70, and the cases there cited; and Tookeys Ltd. v. Valuer General (1925) A.C. 439. In the instant case the Board was therefore right in holding that the evidence of sales of lands said to be comparable, being merely of the improved value of those lands, without further evidence of the character and value of the improvements, could not properly be used as a guide to the unimproved value of Allspice Grove.

With regard to Hemmings' second method of valuation, based upon a notional subdivision for residential development, the Board was of opinion that in valuations under the Land Valuation Law it is improper to take into account the future potential development of the land and therefore rejected this method. In so holding, the Board referred to certain passages from the judgments of the Privy Council in the cases of Maori Trustee v. Ministry of Works (1959) A.C.1, Tetzner v. Colonial Sugar Refining Company Ltd. (1958) A.C.50 and Gollan v. Randwick Municipal Council (1960) 3 All E.R. 449. The first of these, a case from New Zealand, was concerned with the question of the assessment of compensation on the basis of a notional subdivisional development where land is compulsorily acquired. The other two cases were decided upon Fiji and New South Wales Land Valuation statutes respectively, which contain definitions of

56

"unimproved value" and "improvements" substantially similar to those in the local Land Valuation Law.

Before this Court, Mr. Hill conceded that these authorities do not support the view taken by the Board and that the potentiality of the land for beneficial use other than its existing use is a factor properly to be taken into consideration by the Valuation Board. However, as the legislation under which this appeal arises has only recently been brought into operation in Jamaica and this appeal is regarded as of some importance generally, it may be useful for me to state my opinion upon this question.

The Board gave four main reasons for rejecting Hemmings' second method of valuation -

1. Valuations made under the Land Valuation Law are primarily for rating purposes.
2. The principles which determine questions of compensation for property compulsorily acquired are of no assistance in questions of rating assessment.
3. Assessment of compensation for land compulsorily acquired is more generous than assessment of land for rating purposes.
4. To impose a notional subdivision development of land into lots involves the hypothetical sale of a number of separate parcels instead of a sale of the whole land as one parcel as required by the Law.

It is true to say that the primary purpose of the Land Valuation Law appears to be the establishment of the values of lands throughout Jamaica for rating purposes. The conception of "unimproved value" as a basis of taxation is essentially a rating conception in New South Wales, whence it has been imported into Jamaica. In applying the provisions of the Land Valuation Law therefore care must be taken not to apply the principles derived from the construction of statutes whose purpose is the compensation of an owner for land compulsorily acquired from him even where these statutes contain definitions in some respects substantially identical to those in the Land

57

Valuation Law, unless upon due consideration those principles seem to be clearly appropriate. But where, with this caution, the proper construction of these provisions requires the assessment of the value to be made upon the basis of certain factors, no question of comparative generosity or parsimony is relevant.

It is convenient to refer here to the provisions of the Land Valuation Law which govern this matter. Section 7 requires the Commissioner in each valuation district, to "make a valuation of the unimproved and improved value of every parcel of land". By Section 2, "unimproved value" means -

" ..... (b) in relation to improved land the capital
" sum which the fee simple of the land might be expected
" to realise if offered for sale on such reasonable
" terms and conditions as a bona fide seller would
" require, assuming that at the time as at which the
" value is required to be ascertained for the purposes
" of this Law the improvements as defined in this Law
" do not exist:

" Provided that the unimproved value shall in no case be less
"than the sum that will be obtained by deducting the value
"of the improvements from the improved value at the time
"as at which the value is required to be ascertained for
"the purpose of this Law".

" "Improvements" in relation to land means those physical additions
" and alterations thereto and all works for the benefit of the land
" made or done by the owner or any of his predecessors in title
" which, as at the date on which the improved or unimproved value
" is required to be ascertained, has the effect of increasing its
" value:
" Provided that the destruction or removal of timber or
" vegetable growth shall not be regarded as an improvement".

There is no dispute that these provisions require the Commissioner in valuing the land to visualise a hypothetical sale of the land as one parcel by a willing seller to a willing buyer. The implications of the willing seller and the willing buyer concept are now well established and have, with modifications,

been codified in the Land Acquisitions Statutes of many Commonwealth countries. They have been authoritatively stated in a number of cases to which this Court was referred. I need only mention Spencer v. Commonwealth of Australia (1906) 5C.L.R.418; Cedars Rapids v. Lacoste (1914)A.C.569; Fraser v. City of Fraserville (1917) A.C.187; and Vyricherla, Narayana, Gajapatirajin v. Revenue Divisional Officer (1959) A.C.302.

These cases establish that the "value" of the land is its market value, that is, what a man desiring to buy the land would have had to pay for it on the prescribed day to a vendor willing to sell it for a fair price but not desirous of selling it. In arriving at this value, all the advantages which the land possesses, present or future, in the hands of the owner, may be taken into consideration; but its potentialities must be considered as possibilities and not as realised in the hands of the purchaser. The reasoning behind this rule was stated as long ago as 1867 by Cockburn C.J. in R. v. Brown L.R.2 Q.B.630, when he said, at page 631:

> "..... A jury, whether the dispute be as to the value of
> " land required to be taken by the company, or as to the
> " compensation for damages by severance, in assessing the
> " amount to which the landowner is entitled, have to consider
> " the real value of the land, and may take into account not
> " only the present purpose to which the land is applied,
> " but also any other more beneficial purpose to which in
> " the course of events at no remote period it may be applied,
> " just as an owner might do if he were bargaining with a
> " purchaser in the market. That is the mode in which the
> " land would be valued".

And in Vyricherla, ~~et ux~~ case Lord Romer said at page 313:

> " For it has been established by numerous authorities that
> " the land is not to be valued merely by reference to the
> " use to which it is being put at the time at which its
> " value has to be determined (that time under the Indian
> " Act being the date of the notification under s. 4, sub-s. 1),
> " but also by reference to the uses to which it is reason-

" ably capable of being put in the future. No authority
" indeed is required for this proposition. It is a self-
" evident one. No one can suppose in the case of land
" which is certain, or even likely, to be used in the
" immediate or reasonably near future for building purposes,
" but which at the valuation date is waste land or is being
" used for agricultural purposes, that the owner, however
" willing a vendor, will be content to sell the land for
" its value as waste or agricultural land as the case may be.
" It is plain that, in ascertaining its value, the possibility
" of its being used for building purposes would have to be
" taken into account. It is equally plain, however, that
" the land must not be valued as though it had already been
" built upon, a proposition that is embodied in s.24, sub-s.5,
" of the Act and is sometimes expressed by saying that it
" is the possibilities of the land and not its realized
" possibilities that must be taken into consideration".

In my view this reasoning is as applicable to the consideration of the real value of land under the Land Valuation Law as it is under statutes dealing with compensation for land compulsorily acquired. Since the concept in both cases is the same, namely the sum which the willing owner selling in the open market on reasonable terms and conditions would expect to realize, there seems to be no good reason why the same principles should not apply. Granted that the main purpose of the Land Valuation Law is valuation for rating purposes, the emphasis in the definition of unimproved value is nevertheless is upon the value to the owner and there is no reason why that value should differ according to the purpose for which it is assessed.

For this view, which Mr. Hill readily conceded, there is judicial authority. In Tookey's Ltd. v. The Valuer General (1925) A.C.439, where a similar definition of "unimproved value" contained in the Land Valuation Act (No. 2 of 1916 New South Wales) was considered, Lord Dunedin said at page 443:

" ... What the Act requires is really quite simple, here is
" a plot of land, assume that there is nothing on it in

" the way of improvement; What would it fetch in the
" market?"

and later he said:

" It has again and again been pointed out what the value
" of land on compulsory acquisition is, and the principle
" here is exactly the same. The value has been formulated
" by this Board in the case of Cedars Rapids Company v.
" Lacoste (Supra) and Fraser v. City of Fraserville (Supra).
" Citing the former case the value to the owner consists
" of all advantages which the land possesses, present or
" prospective".

Tookey's case emphasizes that the only advantages to be considered are those which the land possesses as bare land, so that in assessing the "unimproved value" of land which had no special adaptability for the purpose of licensed premises the enhanced value desired from the fact that the buildings upon it were licensed premises must not be included.

Tetzner v. Colonial Sugar Refining Company Ltd. (Supra), to which the Board referred, is not an authority for excluding potentiality, a matter which was not relevant in that case. It decided that a valuation which took into account the inherent qualities of the land, its features and its proximity to a prosperous town was made in accordance with correct legal principles, and the fact that the prosperity of the neighbourhood and the consequent increased value of surrounding land resulted in great measure from the successful carrying on of a sugar mill upon the land being valued, was not a factor which could be regarded as an improvement made or appertaining to that land.

In Gollan v. Randwick Municipal Council (supra) it was held that the unimproved value of the land under the New South Wales statute (where "unimproved value" is defined in terms similar to those of our Law), should be assessed on the hypothesis of an unencumbered fee simple estate subject to no condition restricting the use and enjoyment of the land, and that restrictions in the deeds of grant should not be taken into consideration. It is in the course of the judgment in this case

that Lord Radcliffe stated the dictum which appears to have greatly influenced the Board in the instant case, that

" the principles which determine questions of compensation
" for property resumed or expropriated are not of assistance
" or questions of rating assessment."

This seemingly wide statement must not, however, be taken out of its context. Tookey's case (supra) was cited in Gollan's case and was referred to by Lord Radcliffe in his judgment. I do not think that he intended to detract in any way from what was said in that case. The Land Acquisition statutes do not define the value of land by reference to the "fee simple" and I interpret Lord Radcliffe's statement as no more than a timely reminder that the proper construction of a statute must depend upon its own terms and the purpose which it is designed to serve. The decision in Gollan's case shows that a strict interpretation of the Land Valuation Law may lead to a result apparently less generous than that reached in compensation cases, but that this is not a relevant consideration for the valuer.

Learned Counsel for the Crown asked the Court to declare that the subdivisional development method used by the Commissioner in this case is in principle a valid method of valuation. Mr. Hill, on the other hand, while conceding that this method is well established in New South Wales in compensation valuations and might possibly be applied in appropriate circumstances in valuations for rating purposes, asked the Court to say that it had no application in the circumstances of this case. There is no magic in this method. It is merely one of a number of methods of valuation which may in appropriate circumstances be used to assist the valuation authority in arriving at a fair assessment. In all the cases cited to the Court in which this method was used - and they were all compensation cases - the land was admittedly ripe for development in the sense that there was a proved demand for land and a reasonable prospect that it could be sold in subdivision either immediately, or in the near future.

Where it is proved or admitted that the land has the

potentiality of subdivision, and that this potentiality is fully realisable in a relatively short time, I would, as at present advised, see no objection to this method being used as a guide in valuations under the Land Valuation Law. In such cases the important point to be borne in mind is that the hypothetical sale is of the land as it stood at the prescribed date of valuation, that is, unsubdivided, but having the clear potentiality that it was fit for subdivision; accordingly, it can have no greater value in the hands of the owner than it would have for a person willing to buy it with a view to subdivision. The land must not be valued as if it had already been subdivided, for it is its possibilities and not its realised possibilities which must be taken into consideration. See Turner v. Minister of Public Instruction (1956) 95 C.L.R.245; Maori Trustee v. Ministry of Works (supra).

In the instant case the Board having found as a fact that there was at the relevant date no rapid development in the area and that land sales were slow it may be that the proper inference to be drawn is that the land was not ripe for building development in the sense indicated above and that the notional subdivisional method used by the Commissioner was inappropriate. This is, however, a question of degree and proper for the determination of the Board and I express no firm opinion upon it.

The Board ~~has~~ have valued the land at £4,500. ~~It has~~ They have not in ~~its~~ their Reasons stated its basis or method of valuation. ~~It~~ They have ~~has~~ clearly excluded the potentiality of the land for use as building land or for subdivision into building lots. In my judgment this Court ought not in these circumstances to substitute itself for the Valuation Board and attempt a valuation. I would allow the appeal and remit the case to the Board for a rehearing with directions that the land is to be valued as one parcel, taking into account its potentiality at the prescribed valuation date for use as building land and giving due consideration to the fact that some or all of it is capable of subdivision into building allotments, and of being sold at some time and over some period in that form. In deciding the extent to which this potentiality may enhance the

63

present value of the land, the Board should bear in mind that it is its possibilities and not its realised possibilities which must be taken into consideration. ~~He~~ They should further bear in mind that under section 11 of the Land Valuation Law a fresh valuation is required to be made as near as may be, five years after the prescribed valuation date, that is, after the 1st October, 1959. At the re-hearing, both parties should be at liberty to lead further evidence as to the value of the land, having regard to its potentiality.

~~The order of the Valuation Board should accordingly be set aside.~~ I would made no order as to the costs of this appeal. The costs of the first hearing should abide the result of the re-hearing.