Privy Council Appeal No. 6 of 1956

Sergius Alexander Tetzner - - - - - - - - *Appellant*

v.

The Colonial Sugar Refining Company Limited - - - *Respondent*

FROM

THE SUPREME COURT OF FIJI

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND JULY, 1957

Present at the Hearing:
LORD TUCKER
LORD KEITH OF AVONHOLM
LORD DENNING

[*Delivered by* LORD KEITH OF AVONHOLM]

This appeal arises out of a valuation for rating purposes of certain land belonging to the respondent company within the town of Lautoka, in the Colony of Fiji. The valuation made by the appellant, the official valuer in the Colony, was £161,297. The company appealed against this valuation to the Magistrate's Court, Lautoka. This appeal which was originally confined to mere matters of area and quantum of valuation was amended to include what is the substantial question in this appeal, whether the appellant has failed to assess the unimproved value of the land in accordance with correct legal principles inasmuch as he has, it is said, wrongly taken into account factors which must in law be disregarded in assessing such unimproved value. The company claimed that on a correct application of these principles the unimproved value of the lands did not exceed £13,000. The magistrate reduced the valuation to £110,493. The company appealed against this decision to the Supreme Court of Fiji which set aside the valuation of the magistrate and remitted the proceedings to the Magistrate's Court with a direction to which the Board will refer later. From this judgment the valuer has appealed to their Lordships' Board with special leave. It will be convenient in what follows to refer to the appellant as the valuer and to the respondent as the company.

The company came to Lautoka in 1903 and set up a sugar cane crushing mill. The total area of the company's estate amounts to some 2,200 acres but until 1952 none of that estate was within the town of Lautoka. In that year the boundaries of the town were extended to take in, *inter alia*, 650 acres of the company's land. The other material facts, as stated in the respondent's case, which the Board accepts, are as follows :—

(A) The Respondent's land comprises some 650 acres in the town of Lautoka.

(B) The Respondent has erected on this land a large sugar mill with its subsidiary installations. It has made roads on the land. It has constructed a wharf adjoining its land.

(C) Lautoka is a prosperous sugar town where land values are high.

(D) Lautoka has only one sugar mill which is that erected on the Respondent's land.

(E) Lautoka's prosperity depends to a large degree on the existence of this sugar mill.

(F) The sugar mill has been a major factor in creating, and is a major factor in maintaining, the values of land in Lautoka.

(G) If the sugar mill were closed down the present market values of land in Lautoka would drop very considerably.

The valuation code is contained in the Local Government (Towns) Ordinance, 1947 (No. 26 of 1947), as amended by the Local Government (Towns) (Amendment) (No. 2) Ordinance (No. 7 of 1948). It will be sufficient to set out sections 99 and 100 of the Ordinance of 1947 on which the question in this appeal turns:

"99. Subject to the provisions of section 98 every rate made and levied by a town council under the provisions of this Ordinance shall be assessed at a uniform amount per centum on the unimproved value of all rateable land within the town, or within that area of the town to which the rate applies.

100. The unimproved value of land shall be 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 the improvements, if any, thereon or appertaining thereto and made or acquired by the owner or his predecessors in title had not been made."

It is common ground that what has to be valued is the bare ground occupied by the company. It is also agreed that this land so far as contiguous should be assessed as a single unit, though for purposes of valuation the valuer has applied different figures of value for separate lots within the whole. The main issue between the parties is on the principles of valuation to be applied. The land, stripped of its buildings and other physical improvements may be regarded as being in its original condition so that no question arises here, as has arisen in some cases, of land which has been reclaimed or otherwise made suitable for development purposes. The valuer in evidence explained his method of valuation as follows: "In my calculations I had to assume no mill, but I took into consideration the inherent qualities of the land, its features and its proximity to what in fact does exist, viz., Lautoka and amenities, e.g., Administrative centre, hospital, Courthouse, which installations are surrounded by appealed land. I took into account schools, churches, playgrounds." In a later passage he said: "I assumed Lautoka as it is to-day in assessing. I didn't assume what Lautoka would be like without the mill."

The Supreme Court of Fiji (Carew, J.) rejected this approach of the valuer. The learned judge relied on a passage in a judgment of this Board delivered by Lord Dunedin in *Toohey's Ld.* v. *The Valuer-General* [1925] A.C. 439, dealing with a similar statute in New South Wales, as follows: "Now, what he (the valuer) has to consider is what the land would fetch as at the date of the valuation if the improvements had not been made. Words could scarcely be clearer to show that the improvements were to be left entirely out of view. They are to be taken, not only as non-existent, but as if they never had existed." Their Lordships will refer later to *Toohey's* case. The learned judge in this case in applying the passage quoted said: "In the first place if the mill must be regarded as never having existed, how can influence flow from it? A thing which never existed can hardly exert any influence. Secondly, his method of approach would seem to offend against that principle of rating taxation which requires the exclusion of improvements made at the owner's expense. Counsel would have the Appellant Company (i.e. the present Respondent) taxed on an influence which it had built up at great expense by the erection on the subject land of a sugar mill." This line of reasoning was developed by Sir Garfield Barwick, for the company, before their Lordships' Board. The policy of the Ordinance he

said was to encourage development in a largely undeveloped country by freeing earned increment from taxation and taxing only unearned increment due to the efforts of the community collectively or individually. To make a valuation upon a comparison with the values of surrounding land which were due largely to the fact that a mill had been built and other improvements made on the company's land was to make an untrue comparison and to tax the company on such a valuation was to tax it upon values created by the company itself.

In their Lordships' view this argument places upon section 100 of the Ordinance a meaning which it cannot, on a reasonable construction, be taken to bear. The section draws a clear distinction between the land and the improvements on or appertaining to the land. And the improvements have to be made or acquired by the owner or his predecessor in title. The improvements pointed to, are, in their Lordships' opinion, clearly physical improvements of one kind or another and not an improvement, or increase, in the value of the bare land. It is these physical improvements and any value directly attributable to and inhering in them that have to be excluded from valuation. Further it is an over-simplification to say that the values of the surrounding lands have been increased by the existence of the mill and other improvements on the subject land. This is merely one, and it may be a relatively minor, factor in the development of the surrounding district. To give every credit to the company, this may be assumed, in the present case, to be due, among other causes, to the enterprise and management of the company, to capital provided or profits applied (other than that sunk in the physical improvements on the land) in carrying on the business, to ability to find or grow raw material and obtain suitable markets and export facilities, and to its good fortune in attracting a suitable and sufficient amount of labour. In other words the prosperity of the neighbourhood is due to all that goes with the carrying on of a successful manufacturing enterprise. None of these factors can be regarded as improvements made or appertaining to the land and it would be an almost impossible task to expect of a valuer to assign to the physical improvements their quota of contribution to the land values of the locality. But in their Lordships' view this would be an irrelevant enquiry. What in their opinion is required in the present case is that the physical improvements with any value which they attach to the land on which they are situated be excluded from the valuer's computation. The land will then be valued as land void of buildings but situated in the community with the amenities and facilities which have grown up around it. Their Lordships see no objection in the process of valuation to regarding the land as land situated in a sugar town. The valuer need not shut his eyes to the fact that there is a sugar manufacturing industry in existence, though he is not entitled to value the sugar mill and its accessories situated on the subject land. Their Lordships' find themselves in agreement with an illustration given by the learned magistrate in his judgment. "If the undeveloped capital value of a city power house is being assessed one does not assume a city without electricity and all the consequences of the lack of such an amenity."

Any other view would lead to great anomalies and difficulties. If the mill in the present case happened to be outside the town's boundaries (where the Ordinance does not apply) and the rest of the company's land inside the boundaries the influence of the mill and its operations on the value of the land could not be ignored. And if a town be assumed in which several industries are carried on, the proportion which each lends to land values in the town might well be an insoluble problem and in their Lordships' view not one which it is to be assumed the Ordinance intended a valuer to solve.

Reference was made in the course of the argument to the case of *Toohey's Ld.* v. *The Valuer-General* (*cit. sup.*) and particularly to the passage already quoted in the judgment delivered by Lord Dunedin. The section of the statute there under consideration is indistinguishable from

that in the present case. What was being valued in that case was the unimproved value of the site of premises licensed as a public house. The valuer arrived at the unimproved value by deducting the value of the buildings from the amount that would have been realised if the whole subject had been sold as licensed premises. This was clearly wrong because it left as adhering to the unimproved value that element of goodwill attaching to the premises as such. Particular emphasis was laid by counsel for the company on the sentence in the passage referred to: "They [the improvements] are to be taken not only as non-existent, but as if they never had existed". This should be read, however, with a later passage not yet quoted: "It will be observed that the value is not what has been sometimes designated by the expression 'prairie value'. The land must be taken as it exists at the date of the valuation." Their Lordships are unable to attach any special significance to the words "as if they had never existed". The words of the Ordinance are as if they "had not been made". Nor can they extract from the judgment any principle that would prevent a valuer in assessing the unimproved value of land from resorting for purposes of comparison to the values of surrounding land at the date of valuation even though these values may have been largely built up by the initiative of the owner of the subject land in developing the neighbourhood.

The Supreme Court set aside the judgment of the learned magistrate. The formal judgment of the Supreme Court sets out the grounds for so doing as follows:

> "And having found that the valuer proceeded on wrong principles in that the benefits given to the neighbourhood by the operations of the sugar mill on the subject land which continue to be a factor in the value of that land were not disregarded by him in assessing its value it is ordered that this appeal be allowed and that the valuation of £110,493 determined by the Magistrate and set out in his judgment dated the 10th day of October 1953 be set aside and that the proceedings be remitted to the said Magistrate's Court to direct the valuer to make a valuation of the appellant's land itself as it at present stands with such advantage as it at present possesses and viewed as bare land without the sugar mill upon it and without any consideration of the value of the subject land as including the *de facto* sugar mill."

This gives effect to the opinion of the learned judge of the Supreme Court where he says: "In my opinion, the benefits given to the neighbourhood by the operations of the Sugar Mill on the subject land which continue to be a factor in the value of that land should be disregarded in assessing its value." In the view of their Lordships the learned judge has here misdirected himself. It is not the "operations" of the sugar mill that have to be disregarded but the improvements consisting of the sugar mill and its accessories as physical entities. The learned judge would appear to have been influenced by a passage which he quotes from the majority judgment in the Australian case of *McGeoch* v. *Federal Commissioner of Land Tax* (1929) 43 C.L.R. 277. That case was dealing with quite a different set of circumstances and the judgment contains nothing, in their Lordships' opinion, that supports the view of the Supreme Court.

Certain points were raised with reference to government roads on the company's land and to a wharf built by it. There is no evidence before the Board that would entitle their Lordships to say that the magistrate took a wrong view in these matters. Counsel for the appellant was prepared to accept the figure of valuation reached by the magistrate and in their Lordships' view this figure should be affirmed.

Their Lordships will accordingly humbly advise Her Majesty to set aside the judgment of the Supreme Court, and to restore the judgment of the Magistrate's Court. The respondent must pay the costs of this appeal and of the appeal to the Supreme Court.

(39094) Wt. 8075—17 100 7/57 D.L.

In the Privy Council

SERGIUS ALEXANDER TETZNER

v.

THE COLONIAL SUGAR REFINING COMPANY LIMITED

DELIVERED BY LORD KEITH OF AVONHOLM

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