Privy Council Appeal No. 25 of 1969

The Commissioner of Valuations – – – – – *Appellant*

v.

Jamaica Gypsum Limited – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12th January 1971

Present at the Hearing:
LORD HODSON
LORD WILBERFORCE
LORD PEARSON

(*Delivered by* LORD WILBERFORCE)

This appeal is from a decision of the Court of Appeal of Jamaica in a Land Valuation case. The respondent is the owner of a piece of land known as Bull Park Pen of about 95 acres in extent. It is bounded on the North by other land belonging to the respondent where there is a crush rock bin where gypsum is drawn. In order to provide access to this other land, the respondent has constructed a road on part of the subject land leading to the crush rock bin at a cost of £15,000: this road connects with a main road on the south side of Bull Park Pen. The land is generally unsuited for cultivation and its only agricultural use could be for drought resistant trees and the raising of goats or pigs. It is low and humid with a view only from a small upper area. It is rocky and with no soil suitable for growing flowers or the making of gardens, comparing in these respects unfavourably with the neighbouring developed region of Cambridge Heights. In 1960 the unimproved value of the land, stated as 99 acres in extent, was assessed by the appellant Commissioner at £14,800, *i.e.*, at £150 per acre. The respondent by a notice of objection dated 17th May 1961 contended that this valuation should be reduced to £2,000 on the grounds (*a*) that the area of the land had been overstated by about 4 acres (this was accepted and the correct acreage is agreed to be 95 A. O R. 32 P.), and (*b*) that the assessed value was too high. The appellant after consideration notified the respondent that he had reduced the valuation to £9,500, *i.e.*, to £100 per acre. The respondent, as it was entitled to do under the Land Valuation Law 1956, then notified the appellant that it was dissatisfied with his decision and requested him to refer the matter to a Valuation Board for review. This was done and on various dates between September 1963 and April 1964 hearings took place before the Valuation Board for the District of St. Thomas. Oral evidence was given by valuers and others on either side and the Board inspected the site. On 10th April 1964 the Board announced its findings and its conclusion that the unimproved value should be assessed at £4,300. It awarded the respondent fifty per cent of its costs against the Commissioner. These would be assessed on the Magistrates' Courts Scale. These findings were on 26th August 1964 supplemented by a written statement of reasons, from which it appeared that 60 acres had been valued at £65 per acre and a value of £400 placed on the remainder.

The appellant appealed to the Court of Appeal against the Board's assessment, on the ground that the decision was unreasonable, not supported by the evidence, and inconsistent with the Board's own findings. The respondent appealed against the Board's decision as to costs contending that it should have been awarded the whole of its costs and on the Supreme Court Scale.

The Court of Appeal dismissed the appeal and allowed the cross appeal. The Commissioner now appeals to the Board against both parts of the Court of Appeal's decision.

On the substantive matter—namely the valuation of the land—four points were relied upon by the appellant. The first two, which their Lordships will consider together were (i) that the Board had failed to take proper account of the potential value for development or, as it was expressed, as accommodation land, of Bull Park Pen, (ii) that the Board had misapprehended or misapplied the evidence as to comparable properties in the neighbourhood.

In their Lordships' judgment these two contentions cannot be entertained. There is no doubt that the Board took these matters into account, so that the attack upon their findings is one upon their assessment of the evidence and their calculation of value. But this falls squarely within the principle, long established and recently restated by the Board in *Aik Hoe & Co. Ltd v. Superintendent of Lands and Surveys* [1969] 1 A.C.1 that their Lordships will not interfere with the findings of a Court of Appeal in matters purely of land valuation, depending as these must to so great an extent upon local knowledge and appreciation of local conditions. Still less will the Board be willing to re-examine such findings where, as here, the Court of Appeal has affirmed those of the Court below. These principles apply in all their strength to the present case, but it would be no more than fair to the Board to say that their Lordships have no reason to doubt that the Board correctly and fairly appreciated the evidence bearing upon these particular matters upon which they recorded detailed findings.

The third and fourth contentions of the appellant involve matters which, if substantiated, might establish an error of principle of the kind which their Lordships would review. The third concerns the special adaptability of the land for the purposes of the respondent. As already stated, the respondent has constructed at considerable expense an access road on the subject land for its extractive operations on adjoining property. It was shown in evidence that if the respondent had not been able to use the subject land for this purpose, it would have been obliged to construct an alternative means of access along the side of Bull Park River at a greater cost. It was common ground that the value to the respondent of being able to put a road on the subject land, rather than on the alternative route, was approximately £2,000. This "special adaptability value" has to be taken into account in assessing the value of the land. The basis for so doing is that among the possible purchasers in the market on a hypothetical sale there must be included the respondent itself as a purchaser for whom the land would have this special value.

The Board in its findings dated 10th April 1964 included a paragraph in the following terms:

> "*Special Adaptability*
>
> We find that Jamaica Gypsum Ltd. used this land in 1960 [the relevant valuation date] for the special purpose of providing an access route to an area of land nearby on which they carry on mining operations.

Taking into consideration

. . . .

(*e*) Lack of agricultural potential,

(*f*) Remote possibility of development as accommodation land,

(*g*) Special adaptability of land,

. . . .

We believe that a fair and reasonable assessment of the unimproved value is £4,300."

A reference to the special adaptability of the land appears also in the Board's reasons for decision published on 26th August 1964.

In the face of these explicit references to special adaptability, the appellant was in a difficulty. It would not be enough for him to assert that the Board had not attributed sufficient value to this factor, since again, this would be an unreviewable matter of valuation, so he was driven to the contention that, in making the cited references, the Board was merely paying lip service to this factor while in fact entirely disregarding it. The figure of £4,300, it was said, reflected merely the Board's assessment of the value of the land as a potential development area: that this was so was confirmed by the Board's own statement in its reasons for decision that it had valued the property on an acreage basis, placing a value of £65 per acre on 60 acres of the gently sloping part of the land (inclusive of the strip to the south of the main road) and a valuation of £400 on the rest. The reference to the strip south of this main road, on which no part of the access road was placed, confirmed, it was said, that the Board had really left the special adaptability out of its calculations.

In the view of their Lordships, the appellant was undertaking a difficult task, with a heavy onus, in seeking to show that the Board, which had heard much evidence on the special adaptability factor, and which had mentioned it specifically in its findings, in fact left it out of account. And in their Lordships' opinion the appellant fell far short of the demonstration attempted. The figure of £4,300 exceeded substantially the agreed figure for special adaptability, so that, even if the latter was taken at its full amount, it would be hard to demonstrate that it was not included. But in fact there was evidence that the existence of the road might to some extent be inconsistent with the development for residential purposes of the land, so that the Board would have been entitled to find that the value of land could not be arrived at by merely adding development value to special adaptability value but would have to discount one or other of these elements. From the Board's findings it is clear that it did not rate at all highly either the agricultural value or the potential development value of the land, so that there is no inherent improbability, certainly not of the degree which would be requisite if the appellant's argument was to succeed, that the figure of £4,300 reflected each and every use to which the land could be put. That the Board reached, or justified, the figure by reference to a value per acre, is quite consistent with the inclusion of an element representing special adaptability. Their Lordships therefore reject this contention.

The fourth objection was that the Board had left out of account an important class of purchasers or developers namely the Government and/or persons receiving Government grants.

This matter was clearly in the Board's contemplation. In its findings the Board states:

> "The Board is also of the opinion that the area was in 1960 [not] ripe for development and accept the proposition that any building potential the land has is more likely to be exploited under a good subsidised scheme rather than by a private investor for speculative purposes."

It also refers to the fact that the Windsor Lodge Housing Settlement—the nearest and most comparable land—was Government subsidised.

The appellant however pointed to, and strongly relied on, a passage in the Board's reasons for decision in which it was said:

> "We hold that no hypothetical purchaser would have been likely in 1960 to purchase Bull Park Pen property for more than the sum of £4,300 at which we have assessed it—other than the Government under a subsidised scheme."

This wording encouraged the appellant to contend that it showed that the Board, in fixing £4,300 as the value, had left out of account the Government as a possible purchaser.

Their Lordships are not persuaded that this was the case. The words quoted must in their Lordships' opinion be understood against the background of the evidence and the situation as known to the Board. While there was evidence, and also no doubt the Board's general knowledge, that the Government did on occasions enter the land market and acquire land with a view to providing subsidised housing, there was no specific evidence that the Government had any plans as regards the subject land, or, if it were to be interested in buying it, when it might do so or at what price. There was nothing more than the possibility that it might do so—at some time and at some price. The Board could therefore, say no more and in their Lordships' opinion was saying no more than that the Government might become a purchaser at some time, and might for all the Board knew, be willing to pay more than £4,300 for the land. But so uncertain and unquantifiable a factor could be allowed no influence upon the market price in 1960. So interpreted, the Board's decision appears to their Lordships perfectly reasonable and sustainable and their Lordships conclude that on the substantive issues in the appeal, the respondent must succeed.

The appellant's argument as to the costs of the hearing before the Board rested essentially upon the terms of s. 22 (4) of the Land Valuation Law 1956 which reads:

> "(4) Upon an appeal under this section the Valuation Board may confirm or reduce or increase the valuation appealed against and may make such order as it deems fit with respect to the payment of costs."

This, it was said, confers a discretion upon the Board with which, so long as it is judicially exercised, and not on any false principle, the Court of Appeal ought not to interfere. The appellant also relied upon the fact that the respondent had placed a value of £2,000 only on the land, so that, when the Board fixed £4,300, both sides must be regarded as having partially succeeded—or failed.

The Court of Appeal in its judgment went fully into the issue of costs. In their view the real issue was whether the value assessed, viz. £9,500, was too high; the respondent was successful in showing that it was too high by a substantial amount. The case was an intricate one involving difficult questions. The Court could find no trace of misconduct by the respondent or any other sufficient reason for depriving the respondent of 50% of its costs. No reasons for so doing have been given by the Board. The respondent should have its costs in full. Their Lordships agree with the decision of the Court of Appeal. There is no doubt that the Court had power to review the Board's award, since s. 23 (1) allows an appeal where a person "is dissatisfied in any respect with the decision of the Board". Under the Land Valuation (Appeals) Rules 1960, para. 9 (1) (*d*) the Court of Appeal may award such costs as it thinks fit including the costs of hearing before the Board. Moreover the purpose of a reference to the Board is "for review of the valuation" (s. 22 (1)), so that it is right to say that the issue was whether the valuation of

£9,500 was correct. In principle their Lordships consider that a person who successfully secures a reduction in the valuation, unless this is of a minimal amount, should be entitled to his costs, and that, unless by doing so he has added to the length or expense of the proceedings, the fact that he has supported a figure which turns out to be less than that finally accepted should not be to his detriment. It is a matter of experience that there are not many cases where a valuation body, after the full enquiry which it is its duty to make, accepts a figure which is necessarily put forward before all the relevant factors have been ascertained and weighed: to confine the right to recover full costs to such cases would bear hardly on individuals. In the present case the assessments suggested by the respondent were responsibly put forward and even had they been somewhat higher the proceedings would have taken precisely the same course.

Their Lordships therefore are of opinion that the Court of Appeal rightly concluded that the case was eminently one for an award of full costs and have no comment upon the further question that these should be on the Supreme Court scale. A power to fix the scale is expressly conferred by the Rules.

Their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant must pay the costs of the appeal.

In the Privy Council

THE COMMISSIONER OF VALUATIONS

v.

JAMAICA GYPSUM LIMITED

DELIVERED BY
LORD WILBERFORCE

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