In the Privy Council

No. 6 of 1956.

ON APPEAL FROM THE SUPREME COURT OF FIJI

BETWEEN SERGIUS ALEXANDER TETZNER .. .. .. (*Respondent*) *Appellant*

AND

THE COLONIAL SUGAR REFINING COMPANY LIMITED .. .. .. (*Appellant*) *Respondent*

Case for the Appellant

1. This is an appeal by special leave from an Order of the Supreme Court of Fiji, relating to the valuation for rating purposes of land (hereinafter referred to as "the subject land") belonging to the Respondent within the town of Lautoka in the Colony of Fiji. The value placed on that property by the Appellant, who is the duly appointed valuer for the said town, was £161,297. An Order of the Magistrate's Court of the First Class at Lautoka reduced the valuation to £110,493. On appeal the Supreme Court, by Order dated the 27th May 1954, found that the Appellant had proceeded on wrong principles in making his valuation, set aside the valuation determined by the Magistrate, and remitted the proceedings to the Magistrate's Court to direct the Appellant to make a fresh valuation.

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p. 71.
p. 46.
p. 54, l. 22.
p. 70.

2. The subject land comprises about 650 acres, part of a larger area (amounting to some 2,200 acres) owned by the Respondent in the vicinity of Lautoka. A sugar mill belonging to the Respondent stands on the subject land, together with offices, numerous houses for the Respondent's employees, a wharf, a power house for generating electricity, and other improvements.

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3. Until the end of 1952 the town of Lautoka, as constituted for purposes of local government, comprised about 200 acres, including the main shopping and residential areas of Lautoka, but not the subject land or other properties of the Respondent. As from the 1st January 1953 the boundaries of the town were extended so as to embrace (*inter alia*) the subject land. The total area of the town is now about 1350 acres, so that the subject land amounts to a little less than half thereof.

4. In consequence of the extension of the town boundaries it became the duty of the Appellant to value the subject land in accordance with the provisions of the Local Government (Towns) Ordinance, 1947. By Section 99 of that Ordinance it is provided that (subject to certain exemptions from assessment which are not material to the present case) every rate made and levied by a town council under the provisions thereof 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. Section 100 provides as follows :—

> " 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 ".

Sections 101 and 102 of the Ordinance provide for the valuation of all rateable land at least once in every three years by a valuer appointed by the Governor of Fiji, and Section 110 thereof (as amended by the Local Government (Towns) (Amendment) (No. 2) Ordinance, 1948) enables the town council or any person aggrieved by a valuation to appeal to a magistrate's court of the first class, the valuer being made respondent to the appeal. Section 110 further provides that on an appeal thereunder the court shall as it thinks just, either confirm the valuation or direct the rate-book to be altered to give effect to the contention of the appellant as far as that contention appears to the court to be well founded.

5. The growth and development of Lautoka, which is now the second town, in importance and size, in the Colony of Fiji, have been very largely due to the vicinity of the Respondent's sugar mill, which was established in or about 1903 and which directly or indirectly supports a large part of the population of the town. In these circumstances differences have arisen regarding the true construction of the said Section

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100 and the proper application to the facts of the case of the assumption thereby directed, namely that the improvements on or appertaining to the subject land have not been made. Such differences form the subject matter of this appeal.

6. The Appellant in making his valuation valued the subject land in 17 separate parcels, whose unimproved value he assessed at sums amounting in the aggregate to £161,297. The Respondent appealed against such valuations to the Magistrate's Court, contending by its memorandum of appeal (as amended by leave of the Court) (1) that the subject land should have been the subject of one assessment only, or at the most of two assessments, (2) that a comparison of the Appellant's respective valuations *inter se* would show that he had wrongly taken into account factors which must in law be disregarded in assessing the unimproved value of the subject land, and (3) that £13,000 was the maximum figure at which such unimproved value could properly be assessed, alleging in the alternative (4) that certain of the Appellant's assessments were excessive on particular grounds relating to the quantity or quality of the several parcels of land.

p. 12.
p. 12, ll. 20-26.
p. 12, ll. 27-32.
p. 13, ll. 1-5.
p. 13, ll. 7-13.

7. The Respondent's appeal came on for hearing before the Senior Magistrate (C. L. Regan, Esquire) on the 1st September 1953, and occupied five days. The principal witness called for the Respondent was Henry Stokes, a Registered Surveyor and Chartered Engineer in the Respondent's employment. In his evidence in chief Mr. Stokes said that the unimproved value of the subject land if there were no cane industry would be £15 per acre for flat and arable land and £2 to £3 per acre for hill land, totalling only half the value of £13,000 put forward by the Respondent ; he said that if the mill were not on the subject land, cane growing would not be a commercial proposition as the nearest mill was 30 miles away at Rarawai. He added that Rarawai Mill, owned by the Respondent, could not take any cane from Lautoka Mill because it had not got the capacity. In cross-examination Mr. Stokes said that the basis of his valuation was that Lautoka Mill did not exist. He agreed that Rarawai could increase its size and take Lautoka cane, and that the subject land would then have a value of £70 per acre. He described his valuation as " based on prairie value ", adding in re-examination that he regarded the rest of the town as being there when he assessed prairie value.

p. 13.
p. 15, ll. 1-4.
p. 18, ll. 38-45.
p. 19.
p. 21, ll. 34-36.
p. 21, l. 36.
p. 22, l. 2.
p. 22, ll. 13-14.

8. The Appellant gave evidence in support of his valuation and described his methods in detail. He said that he treated the subject land as one holding, but because of the variation in character of the different parts thought it essential to split it into convenient parcels in order to fix values. He stated that he had ignored all improvements and

p. 27.
p. 27, ll. 24-30.
p. 27, ll. 37-42.

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p. 28. described his method as " an analysis of comparable sales and a capitalization of rentals of comparative lands." The Appellant explained at length the factors which he had taken into account in ascertaining the appropriate values of comparable land to be applied to each parcel of the subject land. He summed up his method by saying that in his
p. 34, ll. 7-9. calculations he had to assume there was no mill, but he took into consideration the inherent qualities of the subject land, its features and its proximity to what in fact does exist, viz. : Lautoka and its amenities.
p. 36, ll. 14-15. In cross-examination the Appellant at one point conceded that he did not treat the sugar mill as if it had never existed ; this was explained in
p. 40, ll. 26-28. re-examination in the terms, " I assumed Lautoka as it is today in assessing. I didn't assume what Lautoka would be without the mill."

It is submitted that the Appellant's evidence as a whole shows that his valuation proceeded on the basis required by the Ordinance.

p. 46. **9.** The Magistrate delivered his decision on the 3rd October 1953.
p. 46, ll. 18-26. He first observed that it was notorious that the Respondent operated the largest of its five sugar mills in Fiji on the subject land, and was the
p. 47, ll. 36-42. paramount employer and industrial entity of the district. On the question of separate valuations, he said that he saw nothing wrong in a valuer making notional sub-divisions of large areas of land for the purposes of
p. 47, l. 37. making a valuation " provided his total is on an *in globo* basis ". In this
p. 48, ll. 23-24. connection he referred to *Toohey's Limited* v. *The Valuer-General*, (1925) *A.C.*439, remarking that the result of that case is that the large owner
p. 48, ll. 38-40. has a lower unimproved capital value than an adjoining small owner. After considering the Appellant's evidence the Magistrate concluded that the Appellant had not uniformly treated the sugar mill as never having existed, and continued as follows :—

p.49, ll. 8-35.

> " He has, in my opinion, in estimating for possible subdivision taken the situation as it is rather than as he should visualise it. I take it to be the law that the only supposition the valuer makes is that the improvements never have been there, but that the demand for land remains constant. It is not increased by the demand from those whose buildings are notionally taken from them, nor decreased by a notional decrease in population due to a notional shrinkage in the size of the town due to the notional subtraction of so much of it. I feel sure that in supposing so much subdivision respondent has not taken into account that all the present houses would not be there and yet demand no greater than if they were there. He should work on the basis that the whole square mile is vacant land. . . . . The section sanctions no notional

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assumption in regard to demand for land; but I also assume the whole of appellant's land available to meet that demand. I think, therefore, that respondent is entitled to value very little of appellant's land on a standard foot basis.

Appellant claims not only this but also the likelihood that if appellant's mill had never been erected then there would not be a mill in Lautoka nor would Lautoka be a cane growing district. I do not think section 100 justifies any such assumption. I think the assumption applies strictly to the land itself. Lautoka is endowed by nature with the capacity to support a large sugar mill supplied with cane by the rich cane growing lands about it. Section 100 does not justify any notional interference with nature. The destruction of the whole sugar industry is not to be presumed from the assumption that no improvements had ever been made to appellant's land. If the U.C.V. 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 ". p. 49, ll. 36-44. p. 50, ll.1-3.

10. The question of principle involved in this Appeal appears from the foregoing extracts from the Magistrate's decision, and it is submitted that the Magistrate's view of the true construction of the Ordinance was correct.

11. The Magistrate then proceeded to review the Appellant's valuation in detail on the footing that a valuer must " take the whole of the 650 acres and notionally remove all improvements and notionally exclude it from the amenities of water and electricity, though giving it prospects for such amenities ". He found that it had been definitely proved that cane land could be worth as much as £200 per acre, and the basis of his review was to treat the subject land as cane land, except where a lower value had been placed on it by the Appellant or where particular plots had been proved to have a higher value. The result of this revision was to reduce the aggregate valuation from £161,297 to £119,453. The Magistrate deducted 7½ per cent. from the latter sum to allow the Respondent the benefit of the consideration that " one deal for the whole area will go through at a lower figure than seventeen different deals ", thus arriving at a total of £110,493. The Magistrate ordered the rate-book to be amended accordingly. p. 50, ll. 35-39. p. 51, ll. 16-19. p. 53, l. 26 p. 50, ll. 42-44. p. 54, ll. 22-24.

12. The Respondent was dissatisfied with the decision of the Magistrate's Court, and appealed to the Supreme Court of Fiji, alleging as the grounds of such appeal (*inter alia*) that the method of valuation p. 55. p. 57. p. 57, l. 18.

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p. 57, ll. 21-31. adopted by the Magistrate did not regard all the improvements upon the subject land both as non-existent and as if they had never existed and did not treat the subject land as bare land, and that the Magistrate's valuation presupposed the existence of a sugar mill and its appurtenances adjacent to or in the vicinity of the subject land and took into consideration the enhanced value of the subject land owing to the actual existence of such a sugar mill and its appurtenances and in some cases the possible future development of the land for other industries.

p. 58, ll. 25-32. p. 59, ll. 37-39. p. 60, ll. 1-8. p. 60, ll. 30-40. p. 61, ll. 1-43. p. 62, ll. 1-33. p. 62, ll. 37-40. p. 63, ll. 1-19. p. 63, ll. 20-34. p. 64, ll. 8-40. p. 65, ll. 1-7. p. 65, ll. 34-39. p. 66, ll. 1-12. p. 65, ll. 40-42.

13. The appeal of the Respondent to the Supreme Court was heard on the 12th, 13th and 14th May 1954 by Carew, J., who delivered judgment on the 27th May 1954. After stating that Counsel for the Appellant had not pressed for the acceptance of the Magistrate's valuation, but had directed his argument in support of the Appellant's valuation, and that he had conceded that there should be only one assessment for the subject land, the learned Judge referred at length to *Toohey's Limited* v. *the Valuer-General, supra,* as laying down the principles applicable to rating valuations in Fiji. He also cited passages from *Cedars Rapids Manufacturing & Power Co.* v. *Lacoste,* (1914) *A.C.*569, *at p.* 576, and *In re Lucas and Chesterfield Gas & Water Board,* (1909) 1 *K.B.*16 *at p.* 29. He then considered the Appellant's evidence before the Magistrate, and inferred that his valuation was based on present market values, fixed with regard to " the fact that Lautoka is a sugar growing and crushing centre, and that land values and the prosperity of the district are to a very large extent indeed governed by the existence of the sugar mill ". The Judge criticised the Appellant's method, first on the ground that if the mill must be regarded as never having existed no influence could flow from it, and secondly because such method would offend against a supposed principle of rating taxation (for which the Judge referred to the majority judgment of the High Court of Australia in *McGeoch* v. *Federal Commissioner of Land Tax,* 43 *C.L.R.*277) by causing the Respondent to be " taxed on an influence which it had built up at great expense by the erection on the subject land of a sugar mill ".

14. Carew, J., proceeded to state the question in the following terms :—

p. 66, ll. 20-34.

> " The circumstances of the neighbourhood in which the subject land is situated, namely, Lautoka, are circumstances which have arisen because the appellant Company has established a sugar mill on the subject land. No case has been cited to me the facts of which bear any analogy to the facts of this appeal. Should the appellant Company be taxed, as counsel for the respondents suggest it should, on the influence which its

operations have caused to become a major factor in land values in Lautoka, a sugar town which very largely owes its present prosperity to the Sugar Mill ? It can hardly be doubted that if the Lautoka Sugar Mill closed down land values would drop very considerably. Should its influence in keeping land values at their present level in the neighbourhood be included or excluded in considering the value of the bare subject land as it stands at present with such advantages as it at present possesses—one of those advantages being the influence exerted by the Sugar Mill in retaining surrounding land values at their present level ? "

The learned Judge then described the problem as a perplexing one, and decided it in favour of the Respondent. He said :— p. 66, l. 35.

" 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. p. 68, ll. 11-17.

This factor was not disregarded by the valuer when making his valuation. He proceeded accordingly on wrong principles, and his valuation cannot stand."

The Judge was not however satisfied with the valuation of £13,000 put in evidence on behalf of the Respondent, and accordingly remitted the proceedings to the Magistrate's Court. p. 68, l. 19. p. 69, ll. 14-15.

15. The material parts of the Order of the Supreme Court as drawn up are as follows :— p. 70.

" 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 advantages 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 ". p. 70, ll. 20-31.

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16. It is submitted that the learned Judge came to an erroneous conclusion regarding the true construction of the Ordinance, and that the proper method of valuation is to consider the subject land as bare land with such advantages as it would at present possess in that condition, including the vicinity of the rest of the town of Lautoka in its actual condition and with its actual amenities, in its existing state of prosperity and with the existing demand for land for various purposes. Such a mode of valuation, it is submitted, not only complies with the words of the Ordinance, but can be applied in practice with reasonable precision. On the other hand, an inquiry into the condition and value of neighbouring land as it might be had the improvements on the subject land never existed must of necessity be highly speculative and uncertain. Logically carried out, such an investigation would require the valuer to view the neighbouring land in the physical state which it would exhibit, at the time of the valuation, after a purely imaginary local history wherein the subject land is assumed to remain unimproved. The speculative character of an inquiry of this kind is evident, and the Respondent's contention before the Courts in Fiji was in fact one less consistent in its assumptions. The Respondent's witness, Mr. Stokes, appears to have taken the neighbouring land in its existing physical state, and then to have considered what its economic circumstances and value would be (in that state) had the improvements on the subject land never been made, a method, it is submitted, which is even more uncertain, arbitrary and unreal.

p. 15.

p. 21, ll. 34-45.
p. 22, ll. 1-14.

17. The Appellant humbly submits that the Order of the Supreme Court of Fiji was erroneous and that the Order of the Magistrate's Court should be restored, or alternatively that the proceedings should be remitted to the Magistrate's Court with a direction that the Appellant's valuation be confirmed, for the following among other

Reasons

(1) Because the method of valuation prescribed by the Supreme Court is not that required by the Local Government (Towns) Ordinance, 1947.

(2) Because such method would render the valuation of the subject land (and of any other hereditaments of substantial local importance) a speculative and uncertain process.

(3) Because such method of valuation would prevent the fair distribution of the burden of local taxation as between the Respondent and the other ratepayers of the town of Lautoka.

(4) Because the purpose of the relevant provisions of the Ordinance is to establish a basis for the imposition of rates, not to provide reliefs for persons interested in improved land.

(5) Because the Supreme Court was mistaken in inferring a supposed principle of law, adverse to the Appellant's submission, from the majority judgment in *McGeoch* v. *Federal Commissioner of Land Tax*, 43 *C.L.R.*277.

(6) Because the minority judgment in the last mentioned case ought to be preferred to the majority judgment.

(7) Because the method of valuation supported by the Appellant is the only reasonably practicable method of carrying the Ordinance into effect.

(8) Because the valuation made by the Appellant was in accordance with the Ordinance and was correct.

(9) Because no satisfactory alternative valuation has been put forward on the part of the Respondent.

(10) Because the Order of the Magistrate's Court was correct (except in altering the Appellant's valuation in favour of the Respondent).

E. IRVINE GOULDING.

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