

IN THE PRIVY COUNCIL

No. 25 of 1969

O N A P P E A L

FROM THE COURT OF APPEAL, JAMAICA

B E T W E E N :

THE COMMISSIONER OF VALUATIONS Appellant

- and -

JAMAICA GYPSUM LIMITED Respondent

CASE ON BEHALF OF THE APPELLANT

RECORD

10 1. This is an appeal, pursuant to leave granted by the Court of Appeal of Jamaica, brought by the above-named Appellant against a judgment of the said Court of Appeal, dated the 7th October 1966, partly affirming and partly varying an order of the Valuation Board for the District of St. Thomas, dated the 10th April 1964.

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pp. 41-45

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2. The questions which arise for decision in this appeal are:

20 (i) Whether the said Valuation Board, in assessing the "unimproved value" of certain land known as Bull Park Pen, arrived at a figure which was, as required by section 2 of the Land Valuation Law (Law 73 of 1956), "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"; and

30 (ii) Whether the said Board, when reducing a valuation fixed by the Appellant, acted correctly in allowing the Respondent only 50 per cent of the costs of his objection to the said valuation.

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- p. 41 3. Bull Park Pen consists of about 95 acres, bounded on the North and West by Bull Park River, on the East by John Canoe Gully, and (apart from an area of over one acre which lies further to the South) on the South by the main road from Kingston to Morant Bay. The physical and climatic features of the land are set out in the Findings of the Valuation Board which are summarised in paragraphs 10-12 of this Case.
- p. 3 4. Bull Park Pen was bought by Bellrock Caribbean Limited in 1949 from one Charlotte Elizabeth Harmon for £850. In 1954 the Respondent bought out Bellrock Caribbean Limited and the price then apportioned for Bull Park Pen was £900. The Respondent has constructed a road through the land at a cost of £15,000: the road runs to a crush rock bin (which is outside Bull Park Pen) where gypsum is drawn. 10
- pp. 2-4, 41 5. In 1960 the unimproved value of Bull Park Pen was assessed by the Appellant at £14,800, the date of valuation being the 1st September of that year. Notice of Valuation was duly given to the Respondent. 20
- p. 1a. 6. By a Notice of Objection dated the 17th May 1961, the Respondent contended that the valuation should be reduced to £2,000 for the following reasons :
- (i) that the value assessed by the Appellant was too high, and 30
- (ii) that the Appellant had over-stated the area of the land in the Notice of Valuation by about 4 acres.
- p. 1c. 7. The Appellant considered the objection lodged by the Respondent, and in due course notified the Respondent that he had altered the valuation by amending the statement of the acreage of the land, and by reducing the unimproved value from £14,800 to £9,500.
- p. 1d 8. The Respondent then notified the Appellant that it was dissatisfied with the decision of 40

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the Appellant, and requested the Appellant to refer his decision to a Valuation Board for review under section 22 of the Land Valuation Law 1956.

9. The Respondent's objection was heard by the Valuation Board for the District of St. Thomas on 27th September, and the 18th and 25th October, 1963, and the 17th January, the 28th February, and the 6th and 10th April 1964. Oral evidence was given on behalf of both parties, and the land in question was visited. The Board announced its Findings and Decision on the 10th April 1964, and gave written Reasons for Decision on the 26th August 1964. pp. 1-35
10. The Board found that 55 to 60 acres of Bull Park Pen was sloping or gully land. The soil was powdery and rocky, but of good physical structure. It had been admitted that the land was generally unsuited for cultivation and could only be used agriculturally for trees of a drought resistant nature and the raising of goats and possibly pigs. The rainfall was very low and the vegetation mostly scrub with a few trees, and there were no mineral deposits on the land. In 1960, there was only a limited water supply, with a possibility of a supply from the "Mount Sinai scheme", but this scheme had not so far been implemented. p. 2
pp. 34-35
pp. 39-40
11. The Board further found that there was a limited view of the sea towards the highest area of the property. The property was adjacent to the village of Bull Bay, and would, if and when developed as accommodation land, enjoy certain amenities, for example, a police station, post office, school and church. Electric light passed along the main road on which the property had a frontage. With regard to building potential the Board found that

"At least 55 acres of the land is capable of sub-division for building purposes.

We find that as in 1960 it could not be

p.34, lines
32 - 44.

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regarded as accommodation land in the strict sense of the word and that any such development would take place only in the very remote future - possibly 25 - 30 years.

The Board is also of the opinion that the area was, in 1960, 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. In this connection, the Board has considered the application by Jamaica Gypsum Limited to establish a sub-division for re-settlement of displaced persons.

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We find that any building potential the area possesses would be most likely for the peasantry as the adjacent area is predominantly a low income area

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We find that Bull Park Pen is not as attractive and desirable an area as the adjacent sub-division of Cambridge Heights and Palisadoes Heights."

p. 34

12. The Board further found that the real estate market in 1960 was not as vigorous as in previous years, and that activity of land sales had declined. The only marked development in the vicinity of Bull Bay was in the Windsor Lodge Housing Settlement, a predominantly low-income area which was Government subsidised. Finally, the Board found "that Jamaica Gypsum used this land in 1960 for the special purpose of providing an access route to an area of land nearby on which they carry on mining operations!"

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13. Taking into account the factors set out in the preceding three paragraphs, the Board was of the opinion that the assessment made by the Commissioner of Valuation was too high and that contended for by the Respondent was too low. The Board accordingly assessed Bull Park Pen at £4,300, and ordered that 50 per cent of the

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costs should be paid by the Appellant.

14. The Appellant appealed against the decision of the Valuation Board and set out the following grounds in his Notice of Appeal:

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(i) that the decision of the Board that the unimproved value be assessed at £4,300 was not consistent with the findings of the Board;

10 (ii) that the decision of the Board was unreasonable and could not be supported having regard to the evidence;

(iii) that the Board precluded itself from properly considering the valuation by its failure to appreciate the concept of accommodation land.

15. The Respondent also appealed, and set out the following grounds in its Notice of Cross-Appeal: that the decision of the Board on costs was unreasonable having regard to the fact that the valuation appealed against was found by the Board to be 100 per cent wrong and the problems of fact and law raised by the appeal were so complex as to warrant costs on the Supreme Court scale

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16. The appeal was heard by the Court of Appeal (The Hon. Mr. Justice Henriques, The Hon. Mr. Justice Moody and The Hon. Mr. Justice Eccleston) on the 14th to the 17th February 1966. The judgment of the Court was delivered by Mr. Justice Moody on the 7th October 1966.

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pp.41-45

17. The Court of Appeal dismissed the appeal and allowed the cross-appeal. No reasons for the dismissal of the appeal are expressly set out in the judgment, apart from the statement that "the Board set out its findings and the reasons for its decision very carefully and adequately. As will readily appear, none of the grounds of appeal can succeed."

p. 45

40 18. On the cross-appeal as to costs, counsel

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p. 45

for the Appellant submitted that the reason for the Respondent being deprived of 50 per cent of his costs was that he was only partially successful. This submission was rejected. In the view of the Court, the real issue before the Board was that the value assessed was too high, and the Respondent was successful in his appeal in that the Board reduced the valuation, thereby establishing that the value was too high. The Court of Appeal therefore allowed the Respondent his full costs.

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p. 45

19. The Court was further of the opinion that "good and sufficient reason" for allowing costs in excess of £15 had been shown under section 9 (1) (d) of the Land Valuation (Appeals) Rules 1960, and ordered costs to be taxed on the Supreme Court scale in respect of the hearings before the Board and before the Court.

pp. 49-51

20. On the 27th October 1966, the Court of Appeal (The Hon. Mr. Justice Lewis, The Hon. Mr. Justice Moody, and The Hon. Mr. Justice Shelley) granted the Appellant leave to appeal conditional upon his entering into good and sufficient security in the sum of £500 for the due prosecution of the appeal and the payment of costs. On the 31st January 1969, the said Court (The Hon. Mr. Justice Waddington, The Hon. Mr. Justice Shelley and The Hon. Mr. Justice Fox) ordered that final leave to appeal should be granted.

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21. The Appellant submits that the decision of the Court of Appeal was erroneous in so far as the said Court affirmed the decision of the Valuation Board on the question of the correct assessment of Bull Park Pen, for the following among other

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R E A S O N S

- (1) BECAUSE the decision of the Valuation Board was against the weight of the evidence in that it failed to take proper account of the potential use of Bull Park Pen as accommodation land, or of its special adaptability for the purpose of

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providing an access route to the mining operations of the Respondent.

- 10 (2) BECAUSE the Valuation Board gave undue weight to what it found to be the superior attractiveness and desirability of the subdivisions of Cambridge Heights and Palisadoes Heights. In this connection the Appellant will rely on a comparison of the Valuation fixed by the said Board for Bull Park Pen with the valuation entered on the Valuation Roll for Cambridge Heights, Palisadoes Heights and Mezgars Run, and will submit that, in relation to the latter figures, the amount assessed for Bull Park Pen is too low.

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Exhibits
5,10,12

- 20 (3) BECAUSE the Valuation Board, in considering the likelihood of Bull Park Pen being developed, excluded from consideration one important class of purchasers or developers, namely, the Government and/or persons receiving Government grants, and nothing in the Land Valuation Law entitles the said Board to restrict its consideration of the class of persons to whom a "bona fide seller" might offer the land on "reasonable terms and conditions."

p. 40,
lines 19 -
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Land
Valuation
Law, s.2:
definition
of "unim-
proved
value".

30 22. The Appellant further submits that the decision of the Court of Appeal on the question of costs was erroneous for the following among other

REASONS

- 40 (1) BECAUSE the Appellant was partially successful at the hearing before the Valuation Board, and ought therefore to be allowed some of the costs of the said hearing.
- (2) BECAUSE the Court of Appeal erred in holding that the real issue before the Valuation Board was simply whether the valuation of £9,500 was too high. In the Appellant's submission, either the issue before the said Board was to

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p. 1b

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determine what was the correct valuation to fix for the land, or (alternatively) there were two such issues, namely whether the valuation of £9,500 fixed by the Appellant was too high and whether the valuation of £2,000 contended for by the Respondent in his Notice of Objection was too low. The former alternative is supported by the terms of section 22 of the Land Valuation Law, under which the Commissioner may be requested to refer a valuation to the Valuation Board for review, and the Board "may confirm or reduce or increase the valuation appealed against". The latter alternative is supported by the terms in which the Board expressed its decision, namely that it was "of the opinion that the assessment made by the Commissioner of Valuations is too high and also that the assessment made by Jamaica Gypsum Ltd. is too low."

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- (3) BECAUSE the question of costs is one which lies within the discretion of the tribunal which has heard a case and, provided that that discretion has been exercised judicially and not on any false principle, an order as to costs ought not to be disturbed upon appeal.

. SYDNEY TEMPLEMAN

MARTIN NOURSE

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