PC
G.B.2

15, 1957

In the Privy Council

19811

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 Respondent

In the Privy Council.

Case for the Respondent.

References to the Record of Proceedings.

1. This is an appeal, by special leave granted on the 31st May, 1955, from a judgment of the Supreme Court of Fiji dated the 27th May, 1954, allowing an appeal by the Respondent from an order made on the 10th October, 1953, by the Magistrate's Court of the First Class at Lautoka in the Colony of Fiji. By its said order the Magistrate's Court reduced from £161,297 to £110,493 the valuation made by the Appellant of the rateable value of the Respondent's land in the said town. The Supreme Court in allowing the appeal set aside the said order of the Magistrate's Court and remitted the proceedings to the Magistrate's Court.

p. 71.
p. 70.
pp. 46-54.

2. The question to be determined upon this appeal is whether the Supreme Court of Fiji proceeded upon a right or a wrong principle in allowing the Respondent's appeal and in setting aside the said order of the Magistrate's Court.

In the Privy Council.

Case for the Respondent.

References to the Record of Proceedings. —*cont.*

3. The question so raised is one of construction of two sections of the Local Government (Towns) Ordinance 1947, whereby the value of rateable land falls to be determined. These sections are as follows :—

> " 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."

The dispute between the parties is as to the meaning fairly to be given in the context of the said Ordinance to the phrase " the unimproved value " of the Respondent's land.

4. These appear to be the admitted facts :—

p. 15. l. 23.
p. 27. l. 24.

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

Exhibit E.

(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.

p. 65. l. 5.

(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.

p. 65. l. 15.

(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.

5. The Appellant, who is the valuer for the town of Lautoka, divided the Respondent's land for the purpose of his valuation into 17 lots, valuing each lot separately. The total value put by him on the 17 lots was £161,297. In his evidence before the Magistrate the Appellant explained the principle upon which he had proceeded :—

> " I did not treat the mill as if it had never existed, merely as not existing and the same applies to its appurtenances and installations . . . I think there is no reason why Appellant (i.e. the present Respondent) should cease production. I discounted such a happening . . . In computation of rentals I gave them on basis that they were near sugar producing towns . . . I assumed Lautoka as it is today in assessing. I didn't assume what Lautoka would be without the mill."

Appendix E. p. 35. l. 27. p. 36. l. 14. p. 38. l. 37. p. 39. l. 23. p. 40. l. 26.

6. At the hearing before the Magistrate the Respondent called evidence to prove that the value of the land was £13,000. This evidence was not accepted by the Magistrate nor by the Supreme Court. pp. 15-22.

7. The Magistrate held that the Appellant had erred in not treating the Respondent's land as a single unit. He also disagreed with the values put by the Appellant upon 10 of the 17 lots. The Magistrate then proceeded himself to make a valuation of the 10 lots, as a result of which he reduced the Appellant's figure from £161,297 to £110,493. In making his valuation the Magistrate refused to regard the roads made by the Respondent or the wharf made by it as improvements on the Respondent's land or appertaining thereto. p.p. 47. ll. 5 and 21. pp. 51-52. pp. 53-54. p. 50. l. 39.

8. The Respondent appealed to the Supreme Court against the Magistrate's decision. The appeal was heard by Mr. Justice Carew. At the hearing of the appeal it was conceded by the Appellant's Counsel— p. 57.

(A) that the Magistrate could only vary the valuer's figure on evidence that had been adduced before him ; p. 59. l. 37.

(B) that the Magistrate could not put himself in the position of an expert, which was what he appeared to have done ; p. 60. l. 2.

(C) that there should be one assessment for the Respondent's land and not seventeen ; p. 60. l. 8.

(D) that the values put by the Appellant on his seventeen notional sub-divisions were their present market values valued as bare land. p. 65. l. 3.

In the Privy Council.
—
Case for the Respondent.
—
References to the Record of Proceedings.
—*cont.*

In his judgment the learned judge expressed the view that these concessions were rightly made. With regard to (D) he observed that it could reasonably be inferred that in fixing his value the Appellant had had regard to the fact that Lautoka was a sugar growing and crushing centre and that land values and the prosperity of the district were to a very large extent indeed governed by the existence of the sugar mill.

9. The Appellant's argument in the Supreme Court was summarised by the learned judge in the following passage of his judgment :—

p. 60. l. 3.
p. 65. l. 1.
p. 65. ll. 23 to 30.

> " The advantages possessed by the subject land today viewed as bare land are, counsel argued, its position in Lautoka township having regard to the prosperity of that township and the amenities and services it supplies. And although the subject land must be regarded as if the mill had never existed thereon, the influence of the mill, which is today responsible for Lautoka's prosperity, cannot and should not be ignored when arriving at the value of the subject land."

p. 60. l. 31.

The learned Judge rejected this argument. In doing so he relied on the principle established by the judgment of the Judicial Committee of the Privy Council in *Tookey's Limited* v. *The Valuer-General* [1925] A.C. 439. This was a decision on the construction of section 6 of the Land Valuation Act of New South Wales, which is in its terms almost identical with section 100 of the Fiji Ordinance cited in paragraph 3 above. The learned Judge cited the following passage from the judgment of the Judicial Committee in that case delivered by Lord Dunedin :—

p. 61. l. 19.

> " 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."

p. 66. l. 2.
p. 67. l. 4.

The learned Judge also relied on the judgment of the High Court of Australia in *McGeoch* v. *Federal Commissioner of Lands* [43] C.L.R. 277. He treated this judgment as authority for the proposition that circumstances which had been brought about by operations on the subject land should not be regarded as a factor adding to the value of that land. The passage in the learned Judge's judgment rejecting the Appellant's argument is as follows :—

p. 65. ll. 33 to 42.

> " I agree with Counsel for the Respondent (i.e. the present Appellant) that his method of approach would be convenient, but I cannot agree that it is a logical one. 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."

The Respondent humbly submits that this appeal should be dismissed for the following (among other)

Reasons

(1) Because the Appellant's valuation was not made in accordance with the provisions of sections 99 and 100 of the Ordinance.

(2) Because the Appellant had overvalued the Respondent's land.

(3) Because the Appellant had erred in not treating the roads and the wharf as improvements within the meaning of the Ordinance.

(4) Because Mr. Justice Carew rightly rejected the Appellant's contentions.

(5) Because the direction given by the learned Judge was right.

G. BARWICK.

B. MACKENNA.

L. G. SCARMAN.

In the Privy Council

No. 6 of 1956.

ON APPEAL FROM THE SUPREME COURT OF FIJI

SERGIUS ALEXANDER TETZNER

AND

THE COLONIAL SUGAR REFINING COMPANY LIMITED

Case for the Respondent

MURRAY HUTCHINS & CO.,
11, Birchin Lane,
London, E.C.3.

HEPBURN & SONS LTD., 41-42 Wool Exchange, Coleman Street, London, E C 2
Telephone No. : MONarch 5175 (2 lines)