

7, 1969

IN THE PRIVY COUNCIL

No.22 of 1968

ON APPEAL FROM THE SUPREME COURT OF  
NEW SOUTH WALES COURT OF APPEAL

B E T W E E N :

THE BROKEN HILL PROPRIETARY  
COMPANY LIMITED and  
AUSTRALIAN IRON & STEEL  
PROPRIETARY LIMITED

Appellants

- and -

THE VALUER-GENERAL

Respondent

INVESTMENT OF FUND
NSW INVESTMENT BOARD
LEASING DEPARTMENT
-
APR 1970
25 RUSSELL SQUARE
SYDNEY, N.S.W.

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CASE FOR THE APPELLANTS

Introduction

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1. This is an appeal by leave of the Supreme Court of New South Wales, Court of Appeal, finally granted under the Order in Council of 1909 on the 27th day of May, 1968, from an order dated the 10th day of April, 1968, of that Court (Wallace P., Walsh and Holmes J.J.A.) answering in a manner adverse to the interests of the Appellants certain questions of law submitted to that Court by way of stated case by the Land and Valuation Court pursuant to Section 17 of the Land and Valuation Court Act 1921-1965.

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2. The questions submitted to the Court of Appeal and raised in this appeal concern the proper basis upon which a valuation made by the Respondent should be made where that valuation is required for the purpose of assessing stamp duty payable under the Stamp Duties Act, 1920, as amended, and in particular whether in making such a valuation the Respondent should apply the provisions of Section 5 (2) of the Valuation of Land Act, 1916, as amended.

History

3. The Appellants are iron and steel masters

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carrying on business at various places in Australia and operating steel works at Port Kembla in the State of New South Wales.

4. The said steel works are situated upon land which at all relevant times was valued by the Valuer-General pursuant to the provisions of the Valuation of Land Act, and part of the land upon which the steel works are situated consists of an area of about 503 acres. This area of 503 acres is hereafter referred to as "the said land". 10

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5. Prior to the 30th day of May 1960 the said land was owned by the first-named Appellant and by an agreement in writing dated the 30th day of May 1960 and made between the first-named Appellant and the second-named Appellant it was agreed that the first-named Appellant would transfer to the second-named Appellant the said land for an estate in fee simple.

6. At the date of the said Agreement there were upon the said land 20

(a) Objects attached to the said land such as large buildings and objects attached to such buildings such as furnaces, stacks and flues. The said buildings and items such as those exemplified above were so attached that they could not be removed without structural damage thereto. Such objects passed under the said Agreement being fixtures as between Vendor and Purchaser as forming part of the land. 30

(b) Objects attached to such land or buildings but which were so attached that they might have been removed without structural damage thereto such as cranes attached by bolts and weigh-bridges. Such objects passed under the said Agreement being fixtures as afore-said.

(c) Objects which were not attached to the said land or buildings such as ladles having a capacity of up to 300 tons used in connection with furnace operations 40

and which by reason, for example, of their weight and size passed under the said Agreement being also fixtures as aforesaid.

- (d) Objects which were not attached to the said land or buildings such as fork lift trucks and front end loaders and construction tools, which were not fixtures and did not pass under the said Agreement.

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7. The said Agreement, being liable to duty, pursuant to the provisions of the Stamp Duties Act, 1920, as amended, was duly lodged with the Commissioner of Stamp Duties for stamping.

8. Section 125 (1) of the Stamp Duties Act provides as follows:

"125. (1) In every case in which the Commissioner deems it necessary to ascertain the value of any property for the purpose of assessing duty under this Act he may ascertain such value by such means as he thinks fit, subject in the case of land or any interest therein the value of which exceeds Two hundred pounds to the Valuation of Land Act, 1916."

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9. Section 65 of the Valuation of Land Act is complementary to Section 125 and at the relevant time provided as follows:

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"65. In every case where under the Stamp Duties Act, 1920, the duty payable is dependent upon the value of land or a stratum or of any estate or interest therein, such duty shall be paid according to the valuation made under this Act as shown in a certificate of valuation."

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10. After the Appellants had lodged the said Agreement for stamping the Commissioner of Stamp Duties issued to the Appellants a requisition for evidence of value to be supplied and the

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Appellants thereupon applied to the Valuer-General for a valuation.

11. At all relevant times the said land was premises occupied for trade, business or manufacturing purposes.

12. Section 5 of the Valuation of Land Act provides as follows:

"5. (1) The improved value of land is 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. 10

(2) In determining the improved value of any land being premises occupied for trade, business, or manufacturing purposes, such value shall not include the value of any plant, machines, tools, or other appliances which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto." 20

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13. On the 22nd day of February 1967 the Valuer-General issued to the Appellants a Certificate of Valuation in the sum of One hundred million dollars (\$100,000,000), this valuation including the value of objects falling within Paragraph 6(a), (b) and (c).

14. The Valuation of Land Act gives a right of objection against valuations made by the Valuer-General and the Appellants exercised this right and objected to the said Notice of Valuation. This objection was disallowed by the Valuer-General and the objection was in due course duly referred to the Land and Valuation Court for hearing as an appeal under the Valuation of Land Act. 30

Hearing before Land and Valuation Court

15. Upon the hearing of the appeal before the Land and Valuation Court, it was contended by the Appellants that although the Valuer-General 40

was correct in including in the valuation the value of objects falling within Paragraph 6 (a), he should not, having regard to the provisions of Section 5 (2) of the Valuation of Land Act, have included therein the value of any objects falling within Paragraph 6 (b) and (c). The Valuer-General contended that in making the said valuation and having regard to Section 65 and Section 70 of the Valuation of Land Act, he was entitled to include therein the value of all objects falling within Paragraph 6 (b) and (c) above as well as those falling within Paragraph 6 (a).

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16. The Land and Valuation Court of its own motion and without deciding the matters raised on the hearing of the appeal thereupon under Section 17 of the Land and Valuation Court Act stated a case for the opinion of the Court of Appeal upon the following question:

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Whether in making the valuation referred to in this case (being the case stated by the Land and Valuation Court for the opinion of the Court of Appeal) the Valuer-General was in error in including in that valuation the value of objects falling within:

(i) Paragraph 4 (b) of this case.

(ii) Paragraph 4 (c) of this case.

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17. Paragraph 4 (b) and 4 (c) of the case stated by the Land and Valuation Court are in identical terms with Paragraph 6 (b) and 6 (c) of this case.

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18. Although all the Judges in the Court of Appeal answered the questions of law submitted to the Court in a manner adverse to the interests of the Appellants, namely, in the negative, they were all of the opinion that the Appellants' argument would have succeeded but for the binding effect on the Court of certain observations made by the Privy Council in Gollan v. Randwick Municipal Council (1961) A.C. 82 particularly at pp.101-2. Their Honours felt constrained by those observations to hold that the Valuer-General was not required to make his valuation having regard to the terms of

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Section 5 of the Valuation of Land Act, although were it not for those observations they would have construed the relevant provisions of the Valuation of Land Act in a way which would have resulted in an affirmative answer to the questions submitted to them. The observations referred to above suggested, inter alia, that a duality ran throughout the Act authorising the Valuer-General to make valuations under Sections 5, 6 and 7 for certain purposes and to make valuations of estates or interests for certain other purposes including purposes such as death duties, resumption and mortgage valuations.

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Submissions

19. The Appellants submit that although prior to the decision in Gollan's Case there was some uncertainty as to the nature of the fee simple referred to in Sections 5 and 6 of the Valuation of Land Act, that uncertainty was removed by that decision. Gollan's Case laid down that the fee simple referred to in Section 6 is a fee simple unencumbered and subject to no conditions, being an absolute or pure title such as constitutes full ownership in the eyes of the law, and that in determining a value under Section 5, regard cannot be had to any restrictions or conditions on the actual title vested in the owner. This was the real point decided in Gollan's Case and the Appellants submit that what was said by their Lordships as to valuations made for purposes other than rating was strictly obiter.

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20. Section 125 of the Stamp Duties Act requires a valuation for duty purposes to be made in accordance with the provisions of the Valuation of Land Act. This immediately takes one to Section 65 of that Act which is in Part VI of the Act. This Part is entitled "Use of Valuation Rolls by Government Departments" and is subtitled "Valuations for Stamp and Death Duties". The section refers to a valuation "made under this Act as shown in a certificate of valuation". The reference to a "certificate of valuation" is to Section 70 of the Valuation of Land Act which (in the form in which it stood as at the relevant date) provided as follows:

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10           "70. (1) The valuer-general shall, on application made by any person who has or had an estate or interest in the land at the date at which he requires the valuation made and on payment of the prescribed fee, make a fresh valuation to determine the value of any land at a date before or after the date of the making of the last valuation of such land under this Act.

                  This subsection shall apply only to applications made for valuations to be used for any of the purposes mentioned in this Part."

20                   (2) Any such new valuation shall be subject to objection in like manner as in the case of other valuations under this Act.

                  (3) Where such new valuation is made as at a date prior to the date of the valuation entered on the roll it shall not be entered on the roll, but the valuer-general may furnish a certificate thereof."

30           21. The valuation under Section 65 must be a valuation "made under this Act", and it is submitted that such a valuation must be (in the case of improved land) a valuation made in accordance with the provisions of Section 5. Whilst Section 70 contemplates that the valuation of an "estate or interest" may be made, it is the "improved value" of such estate or interest which the Valuer-General is authorised to find.

40           22. The Valuer-General has no general power to make valuations, his power to make valuations being restricted to making those valuations he is authorised to make by the Valuation of Land Act. The initial power of

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Valuer-General to make valuations is to be found in Section 14 of that Act which authorises the making of valuations of the unimproved, improved, and assessed annual value of lands, and also authorises the making of valuations in respect of "estates and interests", but only of the "unimproved, improved and assessed annual value" of those estates or interests. As at the date of the abovementioned agreement Section 14 of the Act was in the following terms:

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"14. A valuation shall as soon as practicable be made by the valuer-general of the unimproved, improved, and assessed annual value of all a lands other than lands of the Crown, and of such lands of the Crown as the valuer-general thinks proper to include in such valuation: Provided that lands of the Crown within the Western Division, and not within any shire or municipality, shall not, except at the request of the Western Land Board of New South Wales, be included in a valuation.

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Such valuation may also include the unimproved, improved, and assessed annual value of the estates and interests of all owners, including the interests of lessors and lessees in any such lands."

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23. Section 16 of the Valuation of Land Act provides for the making of a valuation roll and requires the entry thereon of certain particulars and permits the entry thereon of other particulars. The particulars which must be entered on the roll include particulars of the unimproved, improved and assessed annual value of land (see Section 16(1)(d), (e) and (f). Section 16(2) gives permission to the Valuer-General to enter other particulars on the roll and these include a statement of "the value of the estates and interests" of owners (Section 16(2)(a)). It is submitted that the values referred to in Section 16(1)(d), (e) and (f) and the values referred to in the first paragraph of Section 14, and the value referred to in

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Section 16(2)(a) is, and can only be, the value referred to in the second paragraph of Section 14.

24. Subsequent sections of the Act, such as Sections 19, 20 and 70, authorise the Valuer-General to make fresh valuations as at subsequent dates, but it is submitted that his authority is limited to the making of valuations of the type referred to in Section 14.

10 25. It is submitted that the "fresh valuation" which the Valuer-General is authorised to make under Section 70(1) is a valuation of the unimproved, improved, or assessed annual value of the land and the unimproved, improved or assessed annual value of any estate or interest in that land, as referred to in Section 14. This, in the case of a valuation of the improved value, requires a valuation made in accordance with Section 5 of the Act, subsection (2) of which specifically requires the improved value  
20 of premises occupied for manufacturing purposes to be found without regard to the value of any plant or machines which are not fixed to the premises or which are only so fixed that they may be removed from the premises without structural damage thereto.

26. The Appellants further submit that the provisions of Section 70(3) are only consistent with the view that new valuations made under Section 70 must be made in accordance with the  
30 statutory formulae. Valuations made in accordance with the statutory formulae are placed on the roll referred to in Section 16. Hence if a new valuation is made under Section 70 as at a date prior to the date of the current valuation appearing on the roll then it is understandable that it should not be inserted on the roll. But Section 70(3) assumes that if the valuation is made as at a date after the  
40 date of the valuation on the roll, it shall be entered on the roll. If it is entered on the roll it must clearly be a valuation made in accordance with the statutory formulae.

27. The terms of Section 76(1) of the Act also support the view that valuations made under Section 70 must be made in accordance with the

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statutory formula. Section 76(1) makes it mandatory for the Valuer-General to supply a certificate of valuation in respect of a new valuation which is made pursuant to an application under Section 20 or Section 70. There can be no doubt that Section 20 valuations must be made in accordance with statutory formulae, because this section requires such valuations to be entered in the valuation roll. The explicit requirement for entry on the roll in the case of a Section 20 valuation is consistent with the implicit requirement to be found in Section 70(3).

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28. The long title to the Valuation of Land Act states (in part) that it is:-

"An Act to make provision for determining values in respect of certain lands, and to provide that statutory rates, taxes, duties, and contributions based on land values shall be levied on values so determined; to provide that the values so determined shall be the values for the purposes of resumption and exchange of land and advances on mortgage or other security by the Crown or any of its departments or offices, or by any local governing body or public trust; to provide that stamp duties and duties on the estates of deceased persons, and duties upon transfer of land shall be payable on such value ..."

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It is proper to look at the long title of the Act for the purpose of determining its scope and resolving any uncertainty in its language. See Birch v. Allen (1942) 65 C.L.R. 621 at 625; Fielding v. Morley Corporation (1899) 1 Ch.1 at p.4 per Lindley M.R. It would appear clear from the long title that the purpose of the Act was to provide that stamp duties should be payable on the same values as are determined for rating purposes, that is, values determined upon the formulae set out in Section 5.

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29. There are clear indications in the Act that the interests which the Valuer-General is authorised to value are interests in the improved

value of the land being valued. See, for example, Section 21(1) which provides:

10 "21. (1) Where there are more owners than one of the freehold of any land the sum of the values of the interests of all the said owners in the land shall be not less than the amount at which the improved value of the land would be estimated if held by one owner in fee simple."

By Section 4(1) of the Act, "owner" is defined for the purposes of the Act as follows:

"'Owner' means the person who, whether jointly or severally, is seised or possessed of or entitled to any estate or interest in land."

20 30. It was conceded by the Respondent in the argument before the Court of Appeal that the reference to "improved value" in Section 21(1) is a reference to the improved value referred to in Section 5. If this be right, the sum of the values of the interests in the land being valued is required to be not less than the improved value determined in accordance with Section 5. This would preclude the determining of "true" values which may be unrelated to the Section 5 value of the entire interest in the land, and the total sum of which, as in the case where the fee simple is subject to restrictions, may be  
30 substantially less than the improved value of the land determined under Section 5.

40 31. It is accordingly submitted that no justification is to be found in the Valuation of Land Act for the view that the reference therein to estates or interests authorises the Valuer-General to make valuations for stamp duty purposes without regard to the provisions of Section 5 of the Act, and a fortiori where the relevant valuation is (as in the subject case) a valuation of an unconditional and unencumbered fee simple.

32. It is further submitted that if the

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construction contended for by the Appellants be correct, then the various provisions of the Act can be given effect to with one another without difficulty, forming a consistent code relating to valuations and valuation rolls, whilst the construction contended for by the Respondent results in a number of unrelated systems of valuation, and makes it difficult or impossible to give effect to various provisions of the Act. Furthermore the form of the Act when first enacted, and its subsequent legislative history, confirms the Appellants' construction.

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33. The Appellants respectfully submit that the Order of the Court of Appeal was wrong and ought to be reversed for the following (amongst other)

R E A S O N S

- (1) Because a valuation made under Section 70 of the Valuation of Land Act for the purposes of Section 65 of that Act of the value of land must be made in accordance with the provisions of Section 5 of the Valuation of Land Act.
- (2) Because in making his valuation the Valuer-General included in that valuation the value of objects which he should not have included having regard to the provisions of Section 5(2) of the Valuation of Land Act.
- (3) Because having regard to the provisions of the Valuation of Land Act the Valuer-General has no power to make valuations of land or estates or interests in land otherwise than in accordance with the statutory formulae set out in the said Act.

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R.M. HOPE.

No.22 of 1968

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Appellants

- and -

THE VALUER-GENERAL

Respondent

C A S E for the Appellants

COWARD, CHANCE & CO.,  
St. Swithin's House,  
Walbrook,  
London, E.C.1.

Solicitors for the Appellants.