[1954] N.Z.L.R. 76

# FINDLAY *v.* VALUER-GENERAL.

LAND VALUATION COURT. Auckland. 1953. August 24; November 3. ARCHER, J.

*Valuation of Land—Capital Value—Valuation for District Valuation Roll—Estimating Various Interests in Land—Mortgages or Charges disregarded—Apportionment of Value between Owners of Different Interests where Owner of Fee Simple divested of Lesser Interests—No Deduction from Capital Value for Charge not Constituting Interest in Land or for Interest of No Value or Impossible to Value—Valuation of Land Act, 1951, ss. 2, 8, 9, 11, 13, 15, 45.*

The owner of any estate or interest in land is entitled to have that estate or interest valued under the Valuation of Land Act, 1951, and entered upon the district valuation roll. In valuing that estate or interest, any mortage or other charge thereon is to be disregarded.

Where, in respect of any land, there are more interests and more owners than one, the united capital values of the interests of all the owners must not be less than the capital value of the land if held in fee simple by a single owner free from encumbrances.

Consequently, no deduction may be made from the capital value of land by reason of a charge thereon which does not constitute an estate or interest in land, or which, though it may constitute an interest in land, has no value or cannot be valued.

*Valuer-General* v. *Public Trustee* ([1942] N.Z.L.R.6; [1941] G.L.R. 625) applied.

An objection by the owner of a property, which is apparently held in fee simple, and which has been valued as such upon the revision of a district valuation roll, can succeed only if the objector can show that he has divested himself of an interest in the land, the value of which can be separately assessed.

The appellant, who was the owner of a house property divided into two flats, appealed against a decision of the Auckland No. 2 Land Valuation Committee which confirmed, subject to minor adjustments, the Valuer-General's valuation of the property upon a revision of the District Valuation Roll.

The appellant conceded that the tenancies on which she based her objection were not interests in land, and made no attempt to show that they had an assessable value. She contended, however, that the capital value of the property should be limited to market value as if sold as a tenanted property.

*Held*, 1. That, as this was not a case in which there were more interests in the land and more owners than one, s. 45 of the Valuation of Land Act, 1951, did not apply.

2. That, in terms of s. 8, the estate or interest of the owner in the land had to be valued as if unencumbered by any mortgage or other charge thereon.

3. That, as the appellant had not shown she had divested herself of a leasehold or other interest which was capable of separate valuation, she was properly assessed with the full value of the unencumbered fee simple of her property.

*Semble*. That, if the appellant's tenancies were upon a monthly or weekly basis, the tenants might be possessed of interests in land, though it was difficult to give such limited interests a monetary value; but if the tenancies (so-called) were no more than "statutory tenancies" under the Tenancy Act, 1948, the tenants had no estate or interest in land, and no more than a statutory right to remain in possession.

*Cameron* v. *The King* ([1948] N.Z.L.R. 813; [1948] G.L.R. 332) followed.

APPEAL by the owner of a house property divided into two flats and situated at Mt. Albert, Auckland, brought against a decision of the Auckland No. 2 Land Valuation Committee which confirmed, subject

Source: McVeagh, J.P. (Ed.). (1967). Land valuation case book. Butterworths, Wellington.

to minor adjustments, the valuation placed upon the property by the Valuer-General upon a revision of the district valuation roll for the Borough of Mt. Albert as at March 31, 1952.

It was common ground that the flats were tenanted ; that, if offered for sale on a " vacant possession " basis, the property might reasonably be expected to realize the amount fixed by the Committee as its capital value (£2,725) ; and that, if offered for sale subject to existing tenancies, it would not realize that amount. It was contended by the owner, as objector before the Committee and as appellant before the Court, that she was entitled to have the property valued for Roll revision purposes on the basis of the price it might be expected to realize if sold as a tenanted property. The question before the Court was limited to that issue.

*Mead*, for the appellant.

*Rosen*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by

ARCHER, J. The duties of the Valuer-General in respect of the preparation and revision of district valuation rolls are set out in the Valuation of Land Act, 1951, the title to which reads :

> An Act for the compilation of certain enactments relating to the periodical valuation of landed properties.

We think it is of importance to note that the principal provisions of the Act appear to be concerned with district valuation rolls. Sections 8 to 17 provide for the preparation, revision and alteration of district valuation rolls, ss. 18 to 25 relate to objections to valuations, and ss. 28 to 34 set out the purposes for which district valuation rolls may be used. The first, and apparently the principal, purpose of a district valuation roll (as set out in ss. 28 to 30) is to provide a basis for the compilation of the valuation rolls to be used by local authorities for purposes of rating. Sections 35 to 46 contain general provisions concerning valuations and as to the powers and duties of the Valuer-General in the exercise of his functions under the Valuations of Land Act, 1951.

It would seem, therefore, that the primary purpose of the Act is to establish district valuation rolls as a basis for rating and to keep such rolls up to date by revision from time to time. The provisions in the Act for the use of valuation rolls for other specific purposes, and for the making of new valuations in connection therewith, appear to be subsidiary to that primary purpose. The conclusion follows, we think, that the values fixed on the revision of a district valuation roll should be such as to provide an equitable basis for the assessment of rates. The basis of valuation to be adopted is, however, determined by the provisions of the Act itself, to which we shall now refer.

The valuation now the subject of appeal was made upon the revision of a district valuation roll under s. 9 of the Valuation of Land Act, 1951. The duties of the Valuer-General on such a revision are set out in s. 11 of the Act, which reads as follows :

> 11. For the purposes of any revision under the foregoing provisions of this Act the Valuer-General shall amend the roll by making all such alterations as are necessary in order that the capital and unimproved values and value of improvements of all the properties to which the revision relates may be readjusted and corrected so as to represent the correct values as at the time of revision, and for that purpose he may make such fresh valuations as may be required.

We are concerned in this appeal only with the capital value of the property in question. "Capital value" is defined in s. 2 of the Act as follows:

2. In this Act, unless the context otherwise requires,—

"Capital value" of land means the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charges thereon, might be expected to realize at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to require:

Two other definitions in s. 2 are relevant to our inquiry:

"Land" means all land, tenements, and hereditaments, whether corporeal or incorporeal, in New Zealand, and all chattell or other interests therein, and all trees growing or standing thereon.

Provided that the value of any trees that have been planted (other than fruit trees or live hedges), and the value of any trees that have been preserved for shelter or ornamental purposes, shall not be included in any valuation appearing in a valuation roll supplied by the Valuer-General to a local authority pursuant to section twenty-eight hereof.

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

It is desirable also to set out the relevant portions of s. 8 which indicates the particulars which are to be set out in a district valuation roll:

8. A district valuation roll shall be prepared for each district, and shall be in the prescribed form, and shall set forth in respect of each separate property the following particulars:

(*a*) The name of the owner of the land, and the nature of his estate or interest therein, together with the name of the beneficial owner in the case of land held in trust.

It is clear from the foregoing provisions of the Act that, although the valuation roll is described as a roll of "separate properties" any estate or interest in land which is held in separate ownership may be a separate property for roll purposes, and may be valued accordingly. Conversely, it would appear that nothing can be entered as a property in a district valuation roll which is not an estate or interest in land. The statutory definition of "land" appears to be the decisive factor in determining what may be entered on a district valuation roll. Confirmation of this is found in s. 13, the relevant portion of which reads as follows:

Where for any reason the value of any interest in any land or of any thing included for the purposes of the principal Act in the meaning of the term "land" has not been included in the value of any land as appearing on any district valuation roll, the value of that land, interest, or thing shall be entered on the district valuation roll.

It will be noted that the definition of "land" includes "all chattels "or other interests therein." Leasehold interests in land may, therefore, be the subject of separate entries in a district valuation roll. Leases and interests of a like character are, however, the subject of the following special provisions in the Valuation of Land Act, 1951:

15. The Valuer-General may also at any time, and from time to time, during the currency of a roll make such alterations or adjustments of value in the case of land which is leased or subject to any other terminable charge or interest as are necessary for the purpose of correctly assessing the respective interests of the respective owners at any specific time.

45. (1) Where land is subject to a lease or in any other case where there are more interests therein and more owners than one, the united capital values, values of improvements, and unimproved values respectively of the interests of all the owners shall not be estimated at less than the capital value, value of improvements, and unimproved value of the land would be estimated at if held by a single owner in fee simple and free from any lease or encumbrance, anything to the contrary in this Act notwithstanding.

(2) For the purposes of this section—

(*a*) The interest of a lessor is the present value of the net rent under the lease for the unexpired term, plus the present value of the reversion to which he is entitled.

(*b*) The interest of a lessee is the present value of the excess (if any) of five per cent. per annum upon the capital value of the leased land over and above the aforesaid net rent for the unexpired term, plus the present value of any right to compensation or of purchase or other valuable consideration to which he is entitled under the lease, and minus the interest (if any) of a sublessee.

(*c*) The interest of a sublessee shall be computed in the same manner, with the necessary modifications, as that of a lessee, and so on in like manner for any interest inferior to that of a sublessee.

(*d*) All apportionments of the interests of lessors, lessees, and sublessees in respect of improvements and of land exclusive of improvements shall be made in the proportion that the capital value of the leased land bears to the value of the improvements thereon and to the unimproved value thereof respectively, subject *pro tanto* to any provisions of the lease whereby the lessee or sublessee has a special interest in the improvements or in the land exclusive of improvements, as the case may be.

(*e*) All computations of present values shall be made on a five per cent. per annum compound interest basis.

(*f*) "Lease" includes agreement to lease, licence, and any other written document for the tenancy or occupation of land; "rent" includes premium, fine, royalty, and any other consideration for the tenancy or occupancy of land.

The statutory provisions which have been quoted enable us to formulate certain propositions which emerge from their consideration as a whole :

1. That the owner of any estate or interest in land is entitled to have that estate or interest valued and entered upon the district valuation roll.
2. That, in valuing that estate or interest, any mortgage or other charge thereon is to be disregarded.
3. That, where in respect of any land there are more interests and more owners than one, the united capital values of the interests of all the owners must not be less than the capital value of the land if held in fee simple by a single owner free from encumbrances.

We think that a further and consequential proposition based upon these propositions may be enunciated :

4. That no deduction may be made from the capital value of land by reason of a charge thereon which does not constitute an estate or interest in land, or which, though it may constitute an interest in land, has no value or cannot be valued.

We conceive that this proposition is in accordance with the decision of *Blair*, J., in *Valuer-General* v. *Public Trustee* ([1942] N.Z.L.R. 6 ; [1941] G.L.R. 625) which concerned the valuation of certain long-term leases conferring the right to mine coal and fireclay, with other incidental rights and powers. At the time of valuation, all the coal and fireclay had been removed from the lands concerned, but the lessees were still required to pay the rentals reserved by the leases during their respective terms, by virtue of the personal covenants contained therein. On an appeal by the Valuer-General, who contended that the respective leasehold interests should be valued by the methods now prescribed in s. 45 (2) of the Valuation of Land Act, 1951, it was held that, as the subject matter of the lease—the coal and fireclay—had, in each case, ceased to exist, there was no longer any "land" to value, and that the personal covenant to pay rent, though at one time relating to land, no longer constituted an interest in land, but had become a mere chose in action which was not within the definition of "land" in the Valuation of Land Act, and so could not be valued under the Act.

Though concerned with the valuation of leases, the decision in *Valuer-General* v. *Public Trustee* ([1942] N.Z.L.R. 6 ; [1941] G.L.R. 625) contains much that is pertinent to the issue now before us. After referring to the fact that, notwithstanding the exhaustion of the minerals referred to therein, the leases conferred certain other rights which might constitute interests in land, *Blair*, J., said : " If these rights or any of " them were, at the time of making the so-called valuation, of assessable " value, then the land to which these rights appertained should have been " assessed in the normal manner, and the value of any right or easement " therein separately so valued " (*ibid.*, 11 ; 629).

As to the method of valuing land held in more interests than one, he said : " In all ordinary cases, the valuer would first look at the " land, and, having ascertained its value, would then look at the in- " terests therein and value those " (*ibid.*, 11 ; 629).

He rejected the contention that the value of the lessors' and lessees' interests must necessarily be assessed by the somewhat arbitrary methods prescribed in s. 45 (2), and held that, before s. 45 (1) could be applied, valuations of the respective interests should first be made " in the " normal manner," *i.e.*, by assessing what they might be expected to realize if offered for sale on reasonable terms and conditions by a *bona fide* seller. He was of opinion that the aggregate values of the respective interests should not merely be " not less than ", but should be " equal to " the capital value of the land as a whole.

As we understand it, *Valuer-General* v. *Public Trustee* ([1942] N.Z.L.R. 6 ; [1941] G.L.R. 625) is authority for the proposition that the duty of the Valuer-General in valuing any property is, first, to value the property as a whole, then to value separately the several interests (if any) therein which are held by different owners, and, finally, to see that the aggregate of the capital values assigned to the respective interests is equal to the capital value assigned to the whole.

The Valuer-General in the present case valued the property as one in which no one but the appellant had any estate or interest. In disregarding tenancies, he followed his usual practice, and one which he claims to be both in accordance with the Valuation of Land Act, 1951, and logically desirable in the preparation of a roll to be used for rating purposes. In so far as the latter is a relevant consideration, we are in agreement with the Land Valuation Committee which said in its judgment : " It would be inequitable if owners of properties in which they " themselves were residing should be asked to bear a substantially higher " proportion of rates than absentee landlords, merely because, being " themselves occupiers, they could notionally give vacant possession of " their properties in the event of a hypothetical sale, and so in theory " secure higher prices."

The question before us, however, must be decided by reference to the Act itself, but having due regard to the fact that, in accordance with the Act, the onus of proof rests upon the appellant as the objector to the valuation. In our view, the assessment made by the Valuer-General, subject to the minor adjustments made by the Committee, was a proper valuation of the property as a whole and one made " in " the normal manner ", as was his first duty according to *Valuer-General* v. *Public Trustee* ([1942] N.Z.L.R. 6 ; [1941] G.L.R. 625). Under the rule as to onus of proof, it is for the appellant to satisfy us that this valuation should be reduced.

It is, therefore, important to note precisely what is contended and what not contended by the appellant. What is contended is that the

capital value of the property should be limited to its market value if sold as a tenanted property. This is agreed by the Valuer-General to be something less than the capital value as found by the Committee. The appellant does not claim, however, that the tenancies constitute interests in land, or that the rights of the tenants (whatever they may be) can be separately valued.

It is obvious, of course, that, if the appellant's flats had been leased for terms, there would have been separate estates to value, and the value of the property as a whole could have been apportioned between the appellant and her tenants. If the tenancies are upon a monthly or weekly basis it may be, though the matter was not argued, that the tenants are possessed of interests in land, but it is difficult to see how such limited interests could be given a monetary value. If the tenancies (so called) are no more than "statutory tenancies" under the Tenancy Act, 1948, the tenants have no estate or interest in land, and no more than a statutory right to remain in possession: *Cameron* v. *The King* ([1948] N.Z.L.R. 813; [1948] G.L.R. 332). No evidence is before us as to the precise character of the tenancies, but counsel for the appellant conceded for the purposes of his argument that the tenants were not possessed of interests in land.

It accordingly follows that this is not a case in which there are more interests in the land and more owners than one, and it is not a case to which s. 45 applies. The terms of that section, however, are by no means irrelevant to the issue before us. What has to be valued, according to s. 8, is the estate or interest of the owner in the land. The definition of capital value makes it clear that the owner's estate or interest is to be valued as if unencumbered by any mortgage or other charge thereon. Section 45 provides that, where there are leasehold or other interests, and, therefore, more owners than one, the aggregate of the capital values assessed shall not be less than the capital value of the land "if held by a single owner in fee simple free from any lease "or encumbrance." These words indicate, in our opinion, that an owner of land must be assessed with the full value of the unencumbered fee simple unless he can show that he has divested himself of a leasehold or other interest which is capable of separate valuation.

To approach the matter from a slightly different angle, we are of opinion that the primary function of the Valuer-General under the Valuation of Land Act, 1951, is to value estates or interests in land, disregarding mortgages and charges or encumbrances which do not constitute interests in land. By this means, the Legislature has sought to ensure that every property bears its fair share of liability for rates. Its intention, as set out in the Act, is that, where an owner in fee simple has divested himself of a lesser estate or interest in land, the value of the land, and the consequent liability for rates, may be apportioned between the owners of the various interests in the land in accordance with the values of their respective interests. It is equally its intention that mortgages and encumbrances or charges not amounting to interests in land are to be disregarded, so as to leave an owner of land which is subject to such mortgages, encumbrances or charges solely liable for the rates assessable on the land, valued as an unencumbered freehold. We think that the tenancies concerned in this case fall within the class of encumbrances or charges which do not constitute interests in land and which must in consequence be disregarded.

To sum up, we are of opinion that an objection by the owner of a property which is apparently held in fee simple and which has been

correctly valued as such upon the revision of a district valuation roll can succeed only if the objector can show that he has divested himself of an interest in the land, the value of which can be separately assessed. In the present case, the appellant conceded that the tenancies on which she based her objection were not interests in land, and made no attempt to show that they had an assessable value.

The appeal, therefore, fails and is disallowed.

*Appeal dismissed.*

Solicitors for the appellant : *Newbery and Mead* (Auckland).

Solicitor for the respondent : *Crown Solicitor* (Auckland).