IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CP No 57/90

UNDER	Part I of the Judicature Amendment Act 1972
IN THE MATTER	of the Valuation of Land Act 1951
AND	
IN THE MATTER	of the Valuation of Land Amendment Act 1988
BETWEEN	HARRY DALE KENT
	Applicant
AND	THE VALUER-GENERAL
	Respondent

Hearing: 26 July 1993

Counsel: Applicant in Person
M T Parker for Respondent

Decision: 27 July 1993

RESERVED DECISION OF McGECHAN J

The Proceeding

This is an application for review brought under the Judicature Amendment Act 1972. It was filed 8 February 1990, and argued, by the Applicant in person. Originally it was headed as in the Administrative Division. That

was erroneous. There was no authority for it to be considered within the former Administrative Division, and it has been dealt with under the general jurisdiction. It represents part of an ongoing difference between the Applicant and the Upper Hutt City Council and Valuation New Zealand as to the proper valuation and rating of land generally known as "Kents Nurseries" in the vicinity of Upper Hutt City. The Applicant feels an obvious sense of grievance. I pass no comment on moral rights and wrongs. The present application must be determined in accordance with law, and the admissible evidence before me.

The Claim

I summarise the Applicant's statement of claim, which of course sets the boundaries of matters in issue which I may consider. The Applicant alleges:

> "1) That the Applicant made an application, dated 18 August 1988, to the District Valuer, Lower Hutt District Office of Valuation New Zealand, in accordance with section 25A(1) of the Valuation of Land Act 1951, as amended by section 11 of The Valuation of Land Amendment Act 1988, for a rates postponement value of farmland for the Nursery property described as Lots 40-42 46 Pt lot 47 D.P.3605 and D.P.12640 in the Land Registration District of Wellington, being also Valuation Number 15900 450 00 00."

The Applicant then quotes s25A(1) Valuation of Land Act 1951 which empowers the Valuer-General to determine the rates postponement value ("RPV") of "farmland" the value of which is in some measure attributable to potential non farming use; and the definition of "farmland" in s2 Rating Powers Act 1988. It is alleged the property in question is a long established nursery used (a family residence apart) for horticultural purposes; is within the City of Upper Hutt which has land value rating; rateable values at 31 March 1988 were land $150,000, improvements $40,000, capital $190,000; such values reflected high potential for use other than existing horticulture; and then:

> 8) That, because the Valuer-General has not refused the Applicant's application to determine the rates-postponement value, the Applicant has no right of objection against that refusal or any subsequent right to have the matter referred to the Land Valuation

Tribunal for determination in accordance with the provisions of Section 25G.(3) of the Valuation of Land Act 1951 as inserted by Section 17 of the Valuation of Land Amendment Act 1988."

The Applicant then complains that delay in determining and entering the RPV in the 1985 valuation roll has meant Upper Hutt City Council has been unable to strike the statutory reduced rate. The Applicant cites s4(1) Judicature Amendment Act 1972 as empowering the Court to determine the RPV in accordance with s25A(2); s25A(2) itself; and then seeks as relief:

> "(a) That the Court determine the rates postponement value for the said Nursery property as if the application had been made on 18 August 1988 as provided for by Section 25A of The Valuation of Land Act 1951 as amended by Section 11 of The Valuation of Land Act 1988.
>
> (b) That the Court order that the Valuer-General enter the rates postponement value, so determined, in the valuation roll to ensure that the date of such entry shall be deemed to been made on the 31st day of March 1988 in accordance with section 25G.(1) of the Valuation of Land Act 1951 as amended by section 17 of the Valuation of Land Amendment Act 1988."

The Defence

The Respondent, by statement of defence and submissions of law arising, takes the point this Court has no power on review to determine the valuation question itself; and denies the application to determine RPV remains undetermined. Positively, the Respondent asserts a decision was made on or about 16 August 1989, the Applicant was notified by notice dated 21 August 1989, and the RPV was entered on the 1985 roll on or about 20 August 1989. The respondent submits, as a matter of law, that under s25G(1) RPV cannot be entered on the roll as at 31 March 1988.

Jurisdiction

The Respondent's first point as to jurisdiction plainly must succeed. This is an application for judicial review pursuant to the Judicature Amendment Act 1972, and the High Court Rules which relate. The Court exercising power of "judicial review", as often it is called, can only review powers and processes. It does not determine results. The Court can set aside

decisions made, and order reconsideration, and indeed give guidance as to manner of reconsideration. However, unlike a statutory general appeal process, judicial review does not empower a Court to reconsider a decision reached by a statutory body and to substitute its own decision. This is no dry conceptualism. Statutory bodies are set up by Parliament, with expertise, to perform specialised functions. They are to be allowed to do so. The Courts do not have equivalent expertise, let alone any greater ability. The Court's function of review is not to assess and state whether the expert decision is right or wrong on its merits. The Court's function is merely to ensure the statutory body carries out its functions, with whatever result, within power granted and in accordance with procedures which the law requires. As it is often put, judicial review is concerned with process, not with result. This distinction too often is not grasped by the general public and lay litigants, who see statutory bodies and Ministers of the Crown challenged in the Courts and their decisions set aside. An erroneous impression is gained that the Courts have some power not only to act in that way, but then to determine the questions involved themselves. That is not so.

Back Dating RPV to 31 March 1988

The RPV was "actually made and assessed" in August 1989. The applicant nevertheless seeks that it be entered in the 1985 valuation roll on 31 March 1988. The Respondent's submission such cannot be done plainly is correct. Section 25G(1) provides:

> "25G. Special provisions as to rates-postponement values and special rateable values - (1) Rates-postponement values and special rateable values as determined under sections 25A to 25F of this Act shall be deemed to be entered in the valuation roll on such date as the Valuer-general or the Valuer, as the case may be, determines, being not earlier than the end of the financial year immediately preceding the date when it is actually made and assessed:
>
> Provided that where any rates-postponement value or special rateable value is made on the application of the owner or occupier to the territorial authority following a revaluation of the district made in the last month of any financial year and that application is made no later than the end of the first month in the next financial year, the rates-postponement value or special rateable value shall be deemed to be entered in the valuation roll on the last day of the previous financial year, whether or not the rates-postponement

value or special rateable value has actually been determined and entered on or before that date or is not determined and entered until after that date."

The application was on 18 August 1988, but was not granted until August 1989. The end of the immediately preceding financial year, within s25G(1), was 31 March 1989, not 31 March 1988. The RPV could not lawfully be entered earlier at 31 March 1988.

A Further Note

The jurisdiction and s25G(1) points necessarily determine this application. It cannot be granted. However, in the light of the Applicant's full submissions, and obvious concerns, I have looked more widely to see if within the facts proved there might possibly be some basis for judicial review which could be let in by proper amendment, and which might at least allow the RPV application to be reconsidered by the Respondent.

Essentially, the Applicant maintains that his RPV application on 18 August 1988 was never determined. This, he contends, was part of a considered strategy devised by the Respondent and Upper Hutt City Council to achieve wider aims concerning the property and its future. On his case, the tactic was to pass off the 1989 general revaluation RPV's as the official response to his 1988 application (the two sets of valuations issued within a very short period). The Applicant contends that when he filed these proceedings on 8 February 1990, the Respondent then created a (forged and back-dated) 1985 roll RPV valuation certificate, slipped it into the system with the next batch of up-dates, and then claimed he had already made the decision at about the same time as the 1989 general revaluation. In support, the Applicant denies ever receiving the 1985 roll RPV valuation certificate himself. The Applicant pointed also to finding, with the assistance of an Upper Hutt City Council clerk, the 1985 roll RPV certificate with a print out date 21 August 1989 in a bundle of valuation certificates seemingly newly received by Upper Hutt City Council on 9 March 1989, and without punch holes in the left-hand margin later found. The inference invited is one of recent production and receipt.

The onus of proof on these matters rests on the Applicant. I accept his evidence he did not himself actually receive the certificate. He so states,

was not cross-examined, and it is inherently possible. I do not accept the remainder of this contention. There is adequate evidence in the Respondent's affidavits that a RPV decision was made on 16 August 1989; entered in the 1985 roll around 20 August 1989; and promptly sent to Upper Hutt City Council. Evidence establishes that if an entry of change was sent to computer processing under the wrong batch number, a notice to the Applicant himself might not have been generated and sent. There is corroborative evidence that computer generated valuation certificates of the type which issued could not be back-dated other than manually, which is not shown to have occurred; and that there was indeed a possibility of a copy going to Upper Hutt City Council but not to the Applicant, although such would be "extremely rare". The Applicant did not seek to cross-examine the deponents concerned. Whatever his own suspicions, I do not find such grave allegations proved on the material presented. It would not surprise me to learn any local body at times left papers lying around unprocessed for considerable periods, particularly when renovations were underway. Not all local bodies are paragons of efficiency.

I make no comment on matters purely directed towards the correctness of the valuation concerned. It is not open to me to decide the point. It could not be said to be so unreasonable as to be one which the Respondent could not have reached within *Wednesbury* principles.

Costs

It concerns me that the Respondent is not in a position to prove conclusively, or even presumptively, that a copy of the 1985 roll RPV determined on 16 August 1990 was in fact despatched to the Applicant. When such a document was not received, there was a recipe for contest. The administrative situation is one which warrants examination. There will be no order as to costs.

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R A McGechan J

Solicitors:

Crown Law Office, Wellington for Respondent