[1964] N.Z.L.R. 810

VALUER-GENERAL *v.* EPPS
VALUER-GENERAL *v.* GRIEVE AND ANOTHER

LAND VALUATION COURT. Auckland. 1964. 20 May; 11 June. ARCHER J.

Valuation—Unimproved value of land—Large section suitable for subdivision into two—Subdivision prevented by existence of substantial house built across potential boundary—Whether land to be valued as capable of subdivision—Valuation of Land Act 1951, s. 2.

The respondents each owned a section of land suitable for subdivision into two building sites, but in each case there was a substantial brick house on the land so placed that there could be no subdivision.

In valuing these properties, the Valuer-General disregarded the existence of these houses, valued each property as two sections, arrived at the value of such sections and deducted the estimated costs of subdivision and sale. The figure so arrived at was adopted as the unimproved value of the respective properties.

The respective owners objected to the valuation so arrived at and their objections were upheld by the Land Valuation Committee. The Valuer-General appealed to the Land Valuation Court.

Held, That in arriving at the unimproved value of the two properties the land was to be regarded as bare land without any buildings upon it, it must be regarded as land capable of subdivision and should be valued with due regard to its subdivisional potential.

Toohey's Ltd. v. *Valuer-General* [1925] A.C. 439, applied.

Thomas v. *Valuer-General* [1918] N.Z.L.R. 164, distinguished.

APPEALS by the Valuer-General against decisions of the No. 1 Auckland Land Valuation Committee by which objections lodged by the respondents against the valuations of their respective properties made upon the revision of the valuation rolls in their respective districts were upheld and the unimproved values reduced. There was agreement between the parties as to all relevant facts and the issue before the Committee, and the Court, was one of law concerning the proper basis of valuation.

D. S. Morris, for the appellant.
Von Sturmer, for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by

ARCHER J. In each case the objector was the owner of a brick house situated upon an area of land which, if the house had not been there, would have been capable of subdivision and sale in two separate lots. In each case, however, the position of the house made it impracticable for a section to be cut off for sale.

Notwithstanding this obstacle to subdivision, the Valuer-General had assessed the unimproved value of the respective properties on a subdivisional basis. Each of the objectors contended that subdivision was not practicable by reason of the position of his house, and that the Valuer-General should have disregarded the possibility of subdivision or made an appropriate allowance for the cost of removing or demolishing the house.

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

It was agreed between the parties that the unimproved values of the respective properties, if assessed on a subdivisional basis, would be higher than if the possibility of subdivision were disregarded. In the case of Mr Epps it was agreed that the unimproved value of his property if deemed capable of subdivision would be £2,375, but if deemed to be not so capable would be £2,100. In the case of Mr and Mrs Grieve it was agreed that the respective values would be £1,750 and £1,525 respectively. The capital values of the two properties were also agreed on, and it follows that any adjustment of the unimproved values must be reflected in an adjustment in each case of the value of improvements. It is not necessary for the purposes of this appeal for us to consider how these agreed figures were arrived at.

The duty of the Valuer-General in each case was to assess the unimproved value of the land in accordance with the definition of "unimproved value" contained in s. 2 of the Valuation of Land Act 1951, which is as follows:

> "Unimproved value" of any land means the sum which the owner's estate or interest therein, if unencumbered by any mortgage or other charge thereon, might be expected to realise at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to impose, and if no improvements (as hereinafter defined) had been made on the said land.

The definition of "value of improvements" in the Valuation of Land Act is:

> "Value of improvements" means the added value which at the date of valuation the improvements give to the land.

The houses on the respective properties were the only improvements with which we need be concerned. It was agreed by the parties that if the houses had not been there the properties would have been capable of subdivision.

The principle that in the assessment of unimproved value the existence of improvements must be disregarded has been established in a long line of cases, of which *Duthie* v. *Valuer-General* (1901) 20 N.Z.L.R. 585; *Colonial Sugar Refining Co.* v. *Valuer-General* [1927] N.Z.L.R. 617; [1927] G.L.R. 433, and *Toohey's Ltd.* v. *Valuer-General* [1925] A.C. 439 were cited and followed in *Valuer-General* v. *General Plastics N.Z. Ltd.* [1959] N.Z.L.R. 857. The result, in the last-mentioned case, of disregarding the existence of buildings which were in fact used for industrial purposes though the land had been zoned "residential" was that a lower unimproved value was fixed for the company's land than would have been the case if its use for industrial purposes, which was dependent upon the existence and use of the buildings, could have been taken into account. The existence and use of its buildings for industrial purposes gave to General Plastics N.Z. Ltd. the right to use its existing buildings and land for industry, notwithstanding that the land had been zoned residential. This was no doubt a factor in the assessment of the capital value of the land, but it was held not to be relevant to the assessment of its unimproved value. In the words of Reed J. in *Colonial Sugar Refining Co.* v. *Valuer-General*: "The "use to which the land is being put or the nature of the existing occupa-"tion is quite immaterial" (*ibid.*, 627; 437); and in the words of Stout C.J. in *Duthie* v. *Valuer-General* ". . . the improvements must "be put completely out of the question. The land is, for this purpose, "to be treated as though it were bare and unimproved at the time "when the valuation is made" (*ibid.*, 589).

The decision of the Privy Council in *Toohey's Ltd.* v. *Valuer-General*

(*supra*), though given upon similar statutory provisions in New South Wales, has long been deemed to be binding in New Zealand as to the method of assessment of unimproved value. In *Toohey's* case Lord Dunedin said in relation to the duty of a valuer: "Now what he has "to consider is what the land would fetch as at the date of valuation "if the improvements made had not been made. Words could scarcely "be clearer to show that the improvements are to be left entirely out "of view. They are to be taken, not only as non-existent but as if they "had never existed. . . . What the Act requires is really quite simple. "Here is a plot of land; assume that there is nothing on it by way "of improvements; what would it fetch in the market?" (*ibid.*, 443). And later in the decision he said: ". . . the case . . . (will be) . . . "remitted to the Supreme Court to direct the Valuer to make a valuation "of the land itself as it at present stands with such advantages as it "at present possesses, and viewed as bare land without any buildings "upon it. . . ." (*ibid.*, 445).

It is true that in a decision of the Privy Council, *Tetzner* v. *Colonial Sugar Refining Coy. Ltd.* (1957) 14 The Valuer (N.S.W.), the duty of the valuer in circumstances which were distinctly unusual was elaborated in terms suggesting that the finding of an unimproved value is not always a simple matter. It was there stated that their Lordships were unable to attach any special significance to the words "as if they had "never existed" which were used by Lord Dunedin in *Toohey's* case. In substance, however, the principles laid down in *Toohey's* case appear to stand unimpaired, and it is still necessary in our opinion for a valuer, when assessing the unimproved value of land, to consider what the land would realise in the market if it were without buildings or other improvements.

The Land Valuation Committee nevertheless sought to distinguish the authorities to which we have referred upon the ground that by reason of the buildings thereon the subdivision of the respective properties was not practicable, save at heavy expense. The Committee based its decision upon *Thomas* v. *Valuer-General* [1918] N.Z.L.R. 164, which was a case in which the land to be valued was held by a Maori Land Board under the Native Townships Act 1910 in trust for a number of beneficial owners. The Board had power to sell, subject to certain conditions, and with the consent of the Governor-in-Council. If the land had been sold with such consent the purchaser would have obtained an unrestricted fee simple. The question in issue was whether the unimproved value of the owner's interest in the land should be reduced because of the restriction upon alienability created by the need for consent to sale. The effect of the decision is summarised as follows in the headnote:

> In assessing the unimproved value of land under the Valuation of Land Acts a distinction must be drawn between restrictions of a permanent nature affecting its alienability or the enjoyment of the owner's estate or interest in it which would continue to affect the land in the hands of a purchaser, and restrictions which are personal and do not devolve upon a buyer.
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> In the case of land held under the Native Townships Act 1910 vested in a Maori Land Board and alienable with the consent of the Governor-in-Council, so that a purchaser, on a sale with such consent, obtains an unrestricted fee simple in the land, such a restriction or condition is not one to be taken into consideration in assessing the unimproved value of the land.

Citing from the Judgment of Hosking J. (*ibid.*, 173) where he said, ". . . All restrictions affecting the alienability and enjoyment of the "estate or interest to be valued must be examined and considered",

the Committee held that in each of the present cases the existence of a brick house upon the subject land created a restriction affecting the alienability of the land for the purpose of subdivision.

With great respect we are unable to agree with the view of the Committee that the existence of a building upon land constitutes in law a restriction affecting its alienability. In *Thomas'* case the purpose of examining the restrictions which were claimed to affect the alienability of land was to determine whether they affected the *quantum* of the owner's estate or interest therein. The question was whether the restriction was one which created an obstacle to sale which would similarly affect a purchaser and one which therefore affected the extent of the owner's interest in the land and in consequence reduced the value of his interest. Whatever the practical effect of the existence of houses upon the properties of Mr Epps and Mr and Mrs Grieve they were subject to no restrictions affecting their right to dispose of their respective properties.

We think it is quite clear that if the land in these cases is considered, in accordance with the direction of the Privy Council in *Toohey's* case, as " bare land without any buildings upon it ", it must be regarded as land capable of subdivision and land which should be valued with due regard to its subdivisional potential. The parties have agreed that if this is the proper basis for valuation the original assessments of the Valuer-General were correct.

The appeals are accordingly allowed and the original valuations confirmed in the following amounts :

In the case of the property of Mr Epps :

Unimproved Value :	£2,375
Value of Improvements :	£3,550
Capital Value :	£5,925

In the case of the property of Mr and Mrs Grieve :

Unimproved Value :	£1,750
Value of Improvements :	£3,850
Capital Value :	£5,600

Appeals allowed.

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

Solicitors for the respondents : *Mahon, von Sturmer and Sumpter* (Auckland).