Parata v Valuer-General

High Court Dunedin
2 March, 2 May 1984
Roper J, RJ MacLachlan

Objection to assessment of rating value – Department had placed higher value of sections with dwellings already built that on those vacant lots because of existing use attributes – Value of improvements

The objector filed an objection to the Valuation Department's assessment of his property (residential sections): the district valuer had placed a much higher land value on those sections with dwellings on them than on those vacant lots. The land was zoned Rural B; the erection of a dwelling was a predominant use only in respect of a property of 20 hectares. The sections were 2000 square metres. Under the district scheme there was little prospect of the owners of vacant sections obtaining consent to build. The Department argued that s 90 of the Town and Country Planning Act 1977 meant that the value of the existing use must form part of the land value because it could not be included in improvements.

Held, The objections were allowed. The land must be valued as if no improvements had been made on the land irrespective of the current use to which the land was being put; the added value of the right to continue to use the property for these purposes was part of the improvements.

Section 25E of the Valuation of Land Act allowed an equitable value to be assessed for rating purposes.

Cases mentioned
Colonial Sugar Refining Co Ltd v Valuer-General [1927] NZLR 617.
McKee v Valuer-General [1971] NZLR 436.
Valuer-General v General Plastics (NZ) Ltd [1959] NZLR 857.

Roper J and Mr RJ Maclachlan: These five objections to land valuations as at 1 July, 1981 were referred to this Court for decision by the Land Valuation Court for decision by the Valuation of Land Act 1951 (as amended by s 4 of the Land Valuation Proceedings Amendment Act 1977). The objections were heard together by consent as the grounds for objection are substantially the same in each case.

Objections 111, 112 and 113 concern residential sections in Puketeraki Township, which is on the east coast, south of Waikouaiti, and in the Silver Peaks County. Objection 114 refers to a boat shed site on the seaward side of the land in Objection 115 and is something of a mystery. The boat shed is built on the foreshore but there appears to be no survey of the area, or lease to the objectors, but the shed was apparently erected with the consent of the Minister of Transport pursuant to authority contained in the Harbours Act 1950. We gathered that these sites are much sought after as it is unlikely that further consents to erect will be forthcoming.

There are some 20 odd residential sections in the Puketeraki township virtually all in one block and the objector's complaint is that the District Valuer has placed a much higher land value on those sections which have dwellings already built on them, than on those that are vacant lots. The vacant sections, apart from one oddly shaped one which has a value of $900, have been valued at $1,000, while adjoining sections on which there are dwellings have values of $4,000 or $5,000. The sole reason for the differences in value lies in the provisions of the Silver Peaks County District Scheme. The settlement is zoned Rural B where the erection of a dwelling is a predominant use only in respect of a property having a minimum area of 20 hectares. The Puketeraki sections are to the order of 2000m^2. Under the District Scheme existing dwellings may be repaired or replaced but there is little

Source: New Zealand Institute of Valuers (1993). Land valuation cases 1965-1992. Hutcheson Bowman & Stewart Ltd, Wellington.

prospect, if any, of the owners of vacant sections obtaining consent to build, and indeed consents have already been refused.

Basically the same reason is behind the valuation of the land in Objection 115 (Doctors Point) at $17,000 with an adjoining unoccupied section of equivalent size being valued at $9,800. There is a dwelling on the objector's section but none on the adjoining section. Although the Doctors Point section is in a Residential zone the County's consent to the erection of a dwelling would have been required at the time of the valuation because its area was less than one acre. Effluent disposal was also a factor which the County would take into account before granting consent.

As for the boat shed site, which was valued at $800, it seems that it was only given that value because of the valuable existing right to maintain a boat shed on it.

The starting point in this enquiry is the definition of "land value" in s 2 of the Act, and it reads:–

> " 'Land value', in relation to any land, means the sum which he 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 hereinbefore defined) had been made on the said land."

Archer J considered the definition in *Valuer-General v General Plastics (NZ) Limited* [1959] NZLR 857, and said at page 858:–

> "In *Duthie v Valuer-General* (1901) 20 NZLR 585, Sir Robert Stout, CJ, said of the definition, to a similar effect, in an earlier Act:
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> > 'This definition is clear and specific and it should be followed whatever the results may be. The duty of the Government Valuation Department, therefore, is, following the definition, to take the lease, and looking at all its provisions, to ascertain what the unexpired term might be expected to realise by sale, if there were no improvements whatever upon the land, and if such unexpired term were offered for sale on such reasonable conditions as a bona fide seller might be expected to require. In dealing with the matter upon this basis, 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)".

In *Colonial Sugar Refining Co v Valuer-General* [1927] NZLR 617 GLR 433, Reed J said:

> 'The correct method of ascertaining the lessee's interest in the unimproved value is in the manner directed in *Duthie v Valuer-General* as previously quoted. The Assessment Court is not debarred from considering the appellant company as a possible purchaser but it must be as an unfettered purchaser, that is to say, the company's special requirements owing to its established business in the vicinity must not be allowed to be a factor in determining the value of this eight years' lease of unimproved mud-flat. The use to which the land is being put or the nature of the existing occupation is quite immaterial" (ibid, 626; 437).

The sentence last quoted appears to be pertinent to the present case.

The general principle that in the assessment of unimproved value the improvements must be totally disregarded was confined by the Privy Council in *Toohey's Ltd v Valuer-General* [1975] AC 439, an Australian case in which a similar definition of unimproved value had to be considered, when Lord Dunedin said:

> 'What . . . [the valuer] . . . had 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 . . . what the Act requires is really quite simple: Here is a plot of land; assume that there is nothing on it in the way of improvements; what would it fetch in the market?" (ibid, 443).
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> "In *Toohey's* case it was held to be fallacious to include in the unimproved value the vale of a liquor licence, which was described as one "which could only be granted in connection with buildings . . . in a calculation in which you are told to assume that no building is there'."

The facts in the *General Plastics* case were that the land in question was in an area zoned Residential under a fully operative scheme but had been used by the owners for many years for industrial purposes, such use being an "existing use" within the meaning of s 36 of the Town and Country Planning Act 1953. The effect was that although zoned residential the owners were entitled, notwithstanding the penal provisions of s 36, to continue to use the land for industrial purposes by reason of s 34(4) which reads

> "Nothing in this section shall apply in relation to an existing use within the meaning of this section of any building or land . . . "

The term "existing use" for the purposes of the section was defined as:

> ". . . a use of that land or building for any purpose that does not require substantial reconstruction or alteration or addition thereto and that is of the same character as that for which it was last used before the date on which the district scheme became operative or of a similar character . . ."

It was apparently common ground that if the land was to be valued as residential the proper unit of value would be £15 per foot, as industrial £25 per foot, and if weight were to be given to the right of "existing use" for industrial purposes, £20 per foot. The Valuer-General adopted the last mentioned basis. On objection it was reduced by the Wellington Land Valuation Committee to residential land value, and Archer J upheld that decision. At page 860 Archer J said:

> "We agree with counsel for the owner that the rights the company enjoys by virtue of its existing use of the land for industrial purposes flow from the use of the buildings and improvements thereon rather than from the use of the land itself. It was not claimed that the land per se had any particular suitability for the purposes for which it has been used, and we understand that its suitability for those purposes is dependent entirely on the existence of suitable buildings thereon. The statutory definition of 'existing use' expressly refers to both land and buildings, but the references to 'a purpose which does not require substantial recognition or alteration or addition thereto' seems to be applicable particularly to the use of buildings or improvements. The legal position appears to be that so long as the present buildings are available and in use for purposes of a similar character to those for which they have been used in the past, and so long as they do not require substantial reconstruction or alteration or addition, the property may still be used for the purposes in question, although they do not conform to its residential zoning. If, however, the buildings were moved or destroyed, the right to use the land for industrial purposes would at once come to an end, and the restrictions imposed by the town planning scheme in respect of residential land would become fully effective.
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> It follows, in our opinion, that if, in accordance with the authorities cited, we are required to disregard the improvements in order to assess the unimproved value of the subject land, we must also disregard the right to continue to use this property for industrial purposes which is a right flowing entirely from the existence of the buildings and from the uses to which they have been put."

In *McKee v Valuer-General* [1971] NZLR 436 (CA) Turner J, in delivering his joint judgment with Richmond J, expressed the view that that passage from the judgment of Archer J "correctly expressed the law".

Mr Robinson submitted that the Court of Appeal's approval of Archer J's decision was based on the latter's appreciation of the effect of s 36 of the 1953 Act, which was in very different terms from the present s 90 of the 1977 Act. Although there are material differences we see no change which makes Archer J's decision no longer good law. Section 90(1) appears to have the same effect as s 36 and reads:

> "(1) Any land or building may be used in a manner that is not in conformity with the district scheme or any part or provision of it as in force for the time being if –
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> (a) The use of that land or building –
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> (i) Was lawfully established before the district scheme or the relevant part or provision of it became operative: and

(i) Is of the same character, intensity, scale as, or of a similar character, intensity, and scale to, that for which it was last lawfully used before the date on which the district scheme or the relevant part or provision of it became operative:"

If, as Mr Robinson, argued, the value of the existing use must form part of land value, because it could not by definition be included in "improvements" then it would seem that s 25E of the Valuation of Land Act 1951 is otiose. That section, so far as is relevant, reads:

"25E. Special rateable values of 'existing use' properties

(1) The Valuer-General may from time to time, of his own motion or upon application in writing made by the owner or occupier thereof, determine the special rateable value of land that –

(a) Is situated in a district where the system of rating on the capital vale or the land value is in force; and

(b) Is used for any purpose for which the owner or occupier is entitled to use the land pursuant to section 90 of the Town and Country Planning Act 1977; and

(c) Is, in the opinion of the Valuer-General, likely to continue to be used for that purpose during the currency of the district valuation roll, meaning the period before the date of the next revision thereof.

(2) The special rateable value shall be determined by the Valuer-General under this section upon the assumption that –

(a) The actual use to which the land is being put is a permitted use in an operative district scheme within the meaning of the Town and Country Planning Act 1977 in force for the district in which the land is situated (whether or not such a scheme is for the time being actually in force); and

(b) The use will be continued for the purpose for which the land is actually being used at the time of valuation; and

(c) The improvements on the land will be continued and maintained or replaced in order to enable the land to be so used."

In our opinion the valuation in Objections 111, 112, 113 and 115 cannot stand.

We therefore allow the objections and fix the following values:

	Capital Value	Land Value	Improvements
Objection 111	10,500	1,250	9,250
Objection 112	28,500	1,250	27,250
Objection 113	28,000	1,000	27,000
Objection 115	52,000	10,000	42,000

We have valued the land values in 111 and 112 at the higher rate because of the greater area held; and see no basis for altering the capital values.

As for the boat shed site, we received no real help from Counsel on this objection. It was common ground that such sites are keenly sought after and we see no basis for interfering with the valuation.

Objection 114 is therefore disallowed.

Solicitors:

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Crown Law Office, Wellington, for Respondent.