Somerville-Culver v Manukau City

Supreme Court, Auckland
18, 19 February, 18 July 1969
Moller J

Rates and rating – Recovery of rate – Proceedings for recovery – Summons – Separate valuation of 10 acres of a 48 acre block – Within "inner area" of Drainage Board District – Both valuations retained after five-yearly revision – No notice of "alteration" given – Whether properly included on valuation roll – County's rate book – Not in prescribed form or to like effect – Whether affecting validity of whole rate – Valuation of Land Act 1951, ss 8, 18, 28 – Rating Act 1925, ss 6, 52, 54, 55, 56, 66 – Auckland Metropolitan Drainage Act 1960.

The new Manukau City as successor to the Manukau County obtained judgment in the Magistrate's Court for £30, 12s, 9d amalgamated sewerage rate levied on 10 acres of the appellant's land for the year ended 31 March 1966. The 10 acres, which is part of one parcel of land containing over 48 acres, came to be included in the "Inner Area:" as defined in the Auckland Metropolitan Drainage Act 1960. The County rated on unimproved value. In 1958 a separate valuation of the 10 acres was made and following the Valuer-General's revision in 1962, this still appeared under no 354/206A as well as that for the whole area under no 354/206. The former owner, who died in 1961, was unaware of the separate valuation of the 10 acres and his executor, the Public Trustee, became aware of it only during an appeal made against the valuation. The appellant appealed on the grounds that the valuation no 354/206A in respect of the 10 acres was not properly part of the district valuation roll and that the County's rate book was inadequate.

Held, 1 The separate valuation of the 10 acre block in 1958 was made without authority and was invalid, but the retention of this valuation following the five yearly revision carried out by the Valuer-General in 1962 amounted to an "alteration" within s 18(1) of the Valuation of Land Act 1951. No notice of alteration was given to the owners as required by s 18(1) but the proviso to that subsection then came into play and preserved the validity of the 1962 valuation. The 1962 valuation therefore was properly part of the valuation roll which, pursuant to s 28 of the Valuation of Land Act, was supplied to the Manukau County and which by virtue of s 6 of the Rating Act 1925, became the valuation roll for its district.

2 The ratepayer is entitled to find in the rate book the whole picture of the rates so that he can decide whether or not to exercise his right of appeal under s 56 of the Act. In the present case the County's so-called rate book is deficient in several ways and is neither in the form prescribed by s 52 nor "to the like effect", with the result that there has never been any notice given complying with the mandatory terms of s 55. The failure to keep the proper rate book and the consequent failure to give proper notice under s 55 are not matters which affect the validity of the whole rate but are matters which affect only the amount due from each individual ratepayer and consequently s 66 does not apply to defeat the appellant's defence.

Cases mentioned
Re Black Bolt and Nut Association of Great Britain's Agreement (No 2) [1962] 1 WLR 75; [1962] 1 All ER 139, applied.
The Mount Benger Rabbit Board v Miller (1946) 41 MCR 28, approved.
Lumsden v Commissioner of Inland Revenue [1914] AC 877; *R v Medical Council* [1897] 2 QB 203 and *McKinnel v Roxburgh East Rabbit Board* [1942] NZLR 74, considered.

Moller J: This is an appeal from a decision of a Magistrate.

The respondent, as plaintiff in the lower Court, claimed from the appellant the sum of £30, 12s, 9d, which, it was alleged, was owing to the respondent as the amalgamated sewerage rate levied

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

on approximately 10 acres of the appellant's land for the year ending 31 March 1966, the rate having been made and levied "on or about the 10th day of August 1965."

I record here that the rate was in fact made and levied by the Manukau County Council, but the learned Magistrate held that the respondent, as the new Manukau City, were "empowered by law to maintain these proceedings to collect rates so struck and levied". And the correctness of this decision is not challenged.

The amalgamated sewerage rate to which I have referred was imposed in order to enable the County to pay the assessment levied on it by the Auckland Metropolitan Drainage Board, the County being then empowered to strike and collect such a rate in respect of all rateable property within its district which was also within the "Inner Area" of the Board's Drainage District, as defined in the Auckland Metropolitan Drainage Act 1960.

Prior to 1960, one Robert John Nicholas owned all that parcel of land comprising 48 acres 1 rood 23 perches, more or less, being all the land on deposited plan no A201, and being allotment 71 East Tamaki Farms, situated in the Parish of Pakuranga, and being the whole of the land comprised and described in Certificate of Title Volume 463 Folio 109 (Auckland Registry). Now, of this 48 acres, an area of about 10 acres, not in any sense "subdivided" from the rest in the ordinary meaning of that word, came to be included in the inner area to which I have referred, the balance remaining outside it. Consequently the 10 acres became rateable property within the County's district as far as the imposition on it of a rate was concerned for the purposes of enabling the County to pay the assessment levied upon it by the Board.

Mr Nicholas died in 1961, and the Public Trustee became his executor. Eventually the whole property was, in 1964, transferred to the appellant pursuant to the terms of Mr Nicholas's will.

What lies at the foundation of the difficulties in this matter is this: By 1958 the total area of approximately 48 acres appeared in the district valuation roll, prepared pursuant to s 8 of the Valuation of Land Act 1951, under no 354/206. In 1958, a separate valuation of the 10 acres was made which, thereafter, appeared in the district valuation roll under no 354/206A. In 1962 a revision of the district valuation roll was carried out by the Valuer-General, following which the *whole* area still appeared under no 354/206 with a value covering all of it, and the 10 acres still appeared under no 354/206A with a value fixed in respect of that portion alone.

It is now necessary to refer to the Valuation of Land Act 1951. Section 8 provides that "A district valuation roll shall be prepared for each district . . . and shall set forth in respect of each separate property" certain particulars. Section 9 deals with the revision of such rolls by the Valuer-General "at such date or dates as the Governor-General in Council from time to time directs". Section 10 makes it incumbent upon the Valuer-General, even though no action is taken by the Governor-General in Council under s 9, to make successive revisions of such rolls every five years. By s 11 it is provided that, in respect of any revision under s 9 or s 10, the Valuer-General "shall amend the roll by making all such alterations as are necessary in order that the . . . unimproved values . . . of all the properties . . . may be readjusted and corrected so as to represent the correct values as at the time of revision . . .". Section 12 gives the Valuer-General power, "from time to time and at any time" during the currency of a roll, to make all such alterations and amendments in it as are necessary to readjust and correct the valuations and entries and bring them up to date; and the "currency" of the roll means "the period elapsing between the date as at which the roll was prepared and the first revision thereof, or, as the case may be, between any one revision and the next"; but the power can be exercised only when the valuations are found to be inaccurate or not up to date in consequence of certain specified happenings of which one is "Any subdivision of the land". Further powers are given to the Valuer-General by s 16 to amend a district valuation roll of his own motion "If in his opinion the alteration is rendered necessary or desirable by reason of particular circumstances affecting the valuation", but this can be done only with the approval of the Minister in charge of the Valuation Department. Merely for completeness I mention that, by virtue of s 41, a new valuation can be made if the owner requires it and pays the prescribed fee.

I mention particularly now s 18, which is in the following terms:

(1) The Valuer-General shall give to each owner whose valuation has at any time been altered a notice of the alteration in the prescribed form.

Provided that the valuation to give such a notice shall not invalidate any valuation.

(2) The owner may object to the altered valuation within such time as is fixed by the Valuer-General in the notice.

Finally in connection with this Act, I refer to s 29, subss (1) and (2) of which read as follows:

(1) In the case of each district the district valuation roll so long as it continues in force, shall be the roll from which the valuation roll of every local authority rating on . . . the unimproved value shall be framed; and for that purpose the Valuer-General, at the request of each such local authority, and upon receiving from it an accurate description of the boundaries of its rating district, shall, in the prescribed manner and form, compile from the district valuation roll, and supply to the local authority, a valuation roll of all rateable property within its rating district.

(2) Each such valuation roll shall, whilst the district valuation roll continues in force, be the valuation roll of the local authority for the purposes of rating.

From this I pass to the Rating Act 1925, which was the Rating Act in force at the material times. Subsection (1) of s 6 provides:

Where the system of rating . . . on the unimproved value is in force, the valuation roll from time to time supplied by the Valuer-General under the Valuation of Land Act 1951 shall be the valuation roll for the district: . . .

It is common ground that the County rated on unimproved value.

The learned Magistrate, who in the end gave judgment for the respondent, recorded, in the reasons for his decision, that the appellant's defence rested on three grounds, the first two of which he set out in these words:

1. The separate assessment of 10 acres is an alteration of the roll otherwise than by way of revision under s 10 or s 12 of the Valuation of Land Act 1951, and is therefore invalid.

2. That if the assessment is valid, then no notice of the alteration of the roll as effected has been given as required by s 18 of the Valuation of Land Act 1951.

At this point it is essential to note that it is also common ground that neither in 1958, when valuation 354/206A first came into existence, nor in 1962, when it remained in existence on the revision, was any notice given to the appellant's predecessors in title under s 18 of the Valuation of Land Act.

After referring to s 6 of the Rating Act, the learned Magistrate said:

The Valuation Department *supplied* the valuation roll to the County consequent upon the revision of the roll on 1 December 1962. It is clear from the evidence of Mr Sharkey, the County Treasurer, and Mr Wagstaff, the Branch Manager of the Valuation Department at Auckland, that the valuation assessment of the 10 acres formed part of the roll as revised on that date. In other words there has been no "alteration" of the roll except on the revision in 1962;

and he then referred to the facts that, after the 1962 revision, the Public Trustee objected to the valuation then put upon the whole of the land under no 354/206, and also that the Valuer-General made a special valuation of the 48 acres pursuant to s 75 of the Estate and Gift Duties Act 1955 for the purpose of assessing estate duty, against which valuation the Public Trustee appealed. The Land Valuation Committee heard both the objection and the appeal, and a further appeal was made to the Land Valuation Court by the Public Trustee in respect of the special valuation. In the end both the objection and the appeal were withdrawn on 24 June 1964.

It is clear that, prior to his death, Mr Nicholas had known nothing at all about the separate valuation in respect of the area of 10 acres, and that, when the objection was made by the Public Trustee and the appeal lodged by him, he also knew nothing of its existence; and it is equally clear that the Public Trustee acquired such knowledge, for the first time, during the hearing before the Land Valuation Committee.

Dealing with this situation the learned Magistrate said:

> The assessment affecting the 10 acres is the valuation placed on this area as the result of the 1962 revision and is simply the valuation of that part of the whole 48 acres as assessed on 1 December 1962. The defendant or her predecessor in title have, in effect, exhausted their right of objection to the 1962 revision by withdrawing the objection thereto. I am of the opinion that the defendant has not been deprived of any right of objection by virtue of the failure by the Valuation Department to give the notice required by s 18 of the Valuation of Land Act 1951 in respect of the 10 acres. In any event the proviso to s 18(1) . . . disposes of the matter as the omission to give the notice shall not invalidate any valuation. Having held there is no alteration no notice was required. Quite apart from this, I am satisfied that the defendant suffered no injustice from the fact of not receiving a notice.

Before me Mr Chamley for the appellant put his submission on this aspect of the case somewhat differently. He said that the essence of the appellant's case was this: Was valuation 354/206A properly made so as to form part of the district valuation roll, and therefore, part of what I shall call the "rating roll" of the County? And he complained that the learned Magistrate gave no consideration at all to what he, Mr Chamley, called "this important aspect" of the matter.

Apart from his final reference to the effect of the proviso to s 18(1), I must say that I find it hard to agree with the reasoning of the learned Magistrate. This is because he seems to base his decision upon some kind of implied opportunity to object, or appeal against, valuation 354/206A once the Public Trustee became aware of its existence, during the proceedings in respect of valuation 354/206, which opportunity the appellant, in effect, lost by reason of the withdrawal of those proceedings. However, this does not assist Mr Chamley to any extent because I have reached a decision which, in the end, has the same result as that of the learned Magistrate, though I have adopted a different approach based upon the particular form of Mr Chamley's submission in this Court.

To introduce the way in which I have chosen to deal with the argument it is necessary to refer to the evidence on a point in respect of which, it seems to me, the learned Magistrate made no finding. Mr Wagstaff, the branch manager of the Valuation Department in Auckland, was called by Mr Chamley, and, in the course of his evidence, he said that valuation 354/206A first appeared in the records of his Department somewhere about October 1958; that, when it was first made as a separate valuation, it was not part of a periodic roll revision under s 12 of the Valuation of Land Act; that it was then made without authority; that the purpose of its being made at that time was one quite different from the present use to which it was being put; and that that purpose was to give the County "a total of all the properties which came within" the County's area.

Mr Sheppard attempted to convince me that valuation 354/206A was not made without authority. By reference to dictionary meanings he sought to establish that the 10 acres was a "separate" property within the meaning of s 8, and, if that contention did not find favour, that the area was the result of a "subdivision" which brought the valuation within s 12(e). Both of these submissions I reject, and I find that the original valuation of the 10-acre block was made without authority and was an invalid one. If this were all that there were to it, and if entries in the County's rate book were founded on such an invalid valuation, those entries would be made without jurisdiction. (See *Chairman, etc, of County of Matamata* v *Maraetai Farms Ltd* [1916] GLR 176).

But it is not the end of the matter, because, as part of the periodic revision in 1962, valuation 354/206A was retained. Now, since the 1958 valuation was an invalid one, and, in effect, did not exist, the retaining of the valuation after the 1962 revision amounted, in my view, to an "alteration" within s 18, with the result that notice of it ought to have been given to the then owner. We know that no such notice was given, but it is at this point that the proviso to s 18(1) comes into play and preserves the validity of the 1962 valuation, in spite of the failure to notify it.

Therefore the 1962 valuation was properly part of the district valuation roll, which, pursuant to s 28 of the Valuation of Land Act, was supplied to the County, and which, by virtue of s 6 of the Rating Act, became what I shall again call its "rating roll".

Consequently I find against the appellant on this part of Mr Chamley's argument.

Then, however, he made a further submission based upon what he contended was the inadequacy of the County's rate book.

For the purposes of this argument, it is necessary to consider certain provisions of the Rating Act 1925.

Section 51 requires that every rate made by a local authority shall be made subject to certain conditions. Then subs (1) and (2) of s 52 provide as follows:

> (1) The particulars of every rate shall be transcribed in a rate book in the form numbered (7) in the First Schedule hereto or to the like effect, and, if the local authority so desires, columns may be added to such form so as to allow of more than one rate being dealt with in the same rate book, or to show what rates are at any time in arrear.
>
> (2) The names and other particulars as to occupiers or owners, and property, and the rateable values, and otherwise, as the nature of the rate may require, shall be taken from the valuation roll.

Section 54 requires that, not less than 14 days before making any rate, the local authority shall publicly notify its intention to make it, the period for which it is made, and the day on which it is to become payable; and it also provides that the local authority shall give notice that the valuation roll is open for inspection.

Section 55 says that the rate book is to be signed by two members of the local authority, and is to be kept in some place, to be publicly notified, for inspection without fee by all ratepayers at such times and hours as the local authority fixes.

Both parties accept that, in respect of the rate which forms the subject matter of these proceedings, a notice under s 54 was given, and that, at the end of that notice, the following paragraph appeared:

> The estimates upon which the above rates are based, having been approved by the Council, are open for inspection, together with valuation rolls and rate books at the County Office during office hours.

Now I must refer to s 56, which I shall set out in full:

Any ratepayer may appeal to the local authority against the rate book on any of the following grounds:

(a) That any person is rated in the rate book on property not appearing in the valuation roll for the time being in force, or for a different value than that stated in such roll:
(b) That any person or property appearing by the valuation roll to be liable to be rated is omitted from the rate book:
(c) That the description of any person or property is erroneously copied from the valuation roll:
(d) That the rate on any rateable property is incorrectly computed:
(e) That any alteration lawfully made in the valuation roll has not been made in the rate book.

Mr Chamley's argument on this point was, in effect, that the County had no rate book at all, because what purported to be its rate book was neither in the form appearing in the First Schedule to the Act, nor "to the like effect". The learned Magistrate, while finding the record deficient in certain respects when compared with the prescribed form, nevertheless found it to be "to the like effect".

The form in the Schedule has eight numbered columns with these headings: "1 Number on Roll": "2 Occupier Full Name": "3 Owner Full Name": "4 Description and Situation of Property": "5 Rateable Value": "6 Rate at in the Pound": "7 By Whom Rate Paid": and "8 Date of Payment". But the County's rate book has a column headed "Valuation No Brought Fwd": another headed "Value U V": another headed "General": another headed "D & S": another headed "Total Current Rate": another headed "Total Due": and another headed "Rebate". These are followed by numerous other columns, all of which, however, really deal with the fact, and dates, of payment. The sheet in the book applicable to this particular land and rate has the valuation number and the unimproved value filled in in the columns provided, and, under the headings "D & S", "Total Current Rate" and "Total Due", there appears the entry "£47, 10s", and, under "Rebate", the entry "£1, 3s, 9d". (The fact that

only £30, 12s, 9d is claimed arises from an adjustment that does not effect the principles to be applied.)

From all of this it would seem that the rate book says nothing about (a) the full name of the occupier, (b) the full name of the owner, (c) the description and situation of the property or (d) the amount of the rate in the pound.

Mr Sheppard argued that, since there were 24,000 ratepayers in the area, it would be asking altogether too much of the County to require it to fill in all the details appearing on the prescribed form, and that its failure to do so did not matter, because the valuation roll was also open to inspection, and, as long as the valuation number appeared in the rate book, the ratepayer could then ask that the valuation roll be produced, and, from it, he would obtain the names of the persons concerned, and the description of the property. As to the amount of the rate in the pound he said that that was set out in the notice under s 54, and that, in any case, the ratepayer could always search the Council's minutes, where the information would be found. For these reasons he argued that the Council's rate book, though not following the form in the Schedule, was "to the like effect".

The learned Magistrate, as I have already mentioned, decided the questions arising out of the rate book in the County's favour, and, in doing so, quoted Viscount Haldane L C in *Lumsden* v *Commissioners of Inland Revenue* [1914] AC 877, when he said: " 'Like' may not import identity of amount as definitely as the use of the word 'same' would have done. But at least it connotes resemblance in main features." The Magistrate went on to say:

> The County's Rate Book does resemble the main features of the form prescribed and does provide the essential information. In my opinion it is "to the like effect" in terms of s 52 . . . and this notwithstanding that the particulars from the Valuation Roll are contained in a separate book but so numbered as to admit of ready reference from the Rate Book.
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> To insist on slavish conformity with the form contained in the First Schedule to the Rating Act 1925, as contended for on behalf of the defendant, in my judgment, does violence to the well-known provisions of s 5(j) of the Acts Interpretation Act 1924.

For a phrase which is used to frequently in Acts of Parliament the words "to the like effect" are unusually difficult of interpretation. In *Re Black Bolt and Nut Association of Great Britain's Agreement (No 2)* [1961] 1 WLR 1139; [1961] 3 All ER 316 Diplock J, as a member of the Restrictive Practices Court, said:

> "This brings us to the final question: 'How like is like?'. The word 'like' is imprecise. At one extreme it can be said that the earth is like an orange: at the other that one pea is like the proverbial other pea in the same pod. To say that one thing is 'like' another means no more than that the one thing bears to the other a resemblance relevant to the comparison sought to be made.":

and, in the same case on appeal, which is reported in [1962] 1 WLR 75; [1962] 1 All ER 139, Lord Evershed M R said:

> "But I return to my consideration of the simple formula in s 20(3) (b), 'any other agreement . . . to the like effect'. I call it a simple formula, and, as a matter of the English language, so it is, though it has, in all conscience, led to very careful and elaborate argument here. But when one speaks of a written instrument and then of some other instrument 'to the like effect', I should have thought that, as a matter of ordinary English, what was meant was that, according to the natural construction of the words used in the second agreement, it was one which was intended to operate in substantially the same way as the first. I do not suggest that that should be taken as an exhaustive statement of what this phrase means, but I do say that, in the ordinary case, the duty of the Court is to look at the new agreement in order to see what, according to the language used, its terms, if made effective, will do or achieve, and then ask the question: Are those things done or achieved the same as those which the old agreement, if operative, would have done or achieved?" *(ibid,* 85; 145).

In this connection I also mention *The Queen on the Prosecution of Isidore Spero* v *General Council of Medical Education and Registration of the United Kingdom* [1897] 2 QB 203. Spero was applying for

registration under the Dentists Act 1878, and he had to make a declaration in the form of the Schedule to the Act, or "to the like effect". Chitty L J, said: "In my opinion, the words 'to the like effect' justify the Court in saying that the declaration may be modified to suit the facts." And A L Smith L J used the words "modified to fit his case". Mr Sheppard relied to some extent upon both of these statements, arguing that the County had done no more than modify the form to suit the facts of its case, namely, that it had so many ratepayers and that the omitted information was readily available in other documents that were open to inspection.

The varying interpretations that I have mentioned show, in my view, that, in deciding what the phrase "to the like effect" means, one must have regard to the nature of the legislation in which it appears, and to the intention of Parliament in passing it. Consequently, the correct meaning to be assigned to the phrase will vary from Act to Act.

For myself, I think that, in connection with s 52 of the Rating Act 1925, these words should be construed in much the same way as Lord Evershed approached them in the *Block Bolt* case. I think I should, in this case, ask the questions: "Are those things achieved by the County's rate book which would have been achieved if the prescribed form had been adopted? Does the County's rate book operate in substantially the same way as does the prescribed form?" And, in attempting to answer these questions, I think a useful guide is found in what was said by Mr A E Dobbie SM in *The Mount Benger Rabbit Board* v *Miller* (1946) 41 MCR 28, where the headnote reads:

> The object of the public notification under s 55 of the Rating Act 1925 of the place where the rate book is kept for inspection is to give ratepayers the opportunity to search a rate book which discloses the whole picture of the rates made and levied against each of them so that they may determine whether or not to exercise the right of appeal provided for by s 56 of the Act.

In my view, even though a rate book does not slavishly follow the prescribed form, the ratepayer is entitled to find in it, without making searches elsewhere, the whole picture of the rate so that he can decide whether or not to exercise his right of appeal under s 56. If it does this, though in a different way from the form, it is "to the like effect". This was the result in *The Mount Benger* case, as it was also in *McKinnel* v *Roxburgh East Rabbit Board* [1942] NZLR 74. In the present case I consider that a perusal of the grounds of appeal against the rate book, as set out in s 56, immediately discloses not one way, but several ways, in which the present record is deficient, perhaps most importantly in the failure to supply the rate in the pound. Therefore I find that the County's so-called rate book is neither in the form prescribed by the Act, nor "to the like effect" – and that, therefore, in reality, there has been no rate book at all, with the result that, in spite of the words appearing at the end of the notice given under s 54, there has never been any notice given under s 55; and, moreover, s 55 is mandatory in its terms, and strict compliance with it is a condition precedent to an action to recover rates due. (See: The *Mount Benger* case.)

Having reached that decision I must now consider two further sections of the Rating Act 1925. Section 58 provides as follows:

> The rate book so signed, with corrections (if any) so initialled, shall be conclusive evidence in all Courts of the correctness of the contents thereof without proof of such signatures, and that the same has been duly made.

Since I have found that, in this case, there was really no rate book at all, the record kept by the County cannot qualify as conclusive evidence under this section.

Section 66 presents greater difficulty. It reads:

> "The invalidity of any rate as a whole shall not avail to prevent the recovery of the rate appearing in the rate book to be payable by any person, unless such invalidity is on the ground that such rate is a rate at a greater amount in the pound than the local authority levying the same is empowered to levy."

Here we have no rate at all "appearing in" a proper rate book "to be payable by any person". Moreover, no "person" is named in the so-called rate book. Mr Sheppard said, and Mr Chamley did not object to his doing so, that the whole rate book was in the same form. And, from this, Mr

Sheppard argued that the whole rate must therefore be invalid, and that the failure to keep a proper rate book could not be used as a defence in this action. After giving the matter careful consideration I have come (after, however, some hesitation) to the decision that the failure to keep the proper rate book, and the consequent failure to give proper notice under s 55 of the Act, are not matters that affect the validity of the whole rate, but are matters which affect only the amount due from each individual ratepayer, and that, consequently, s 66 does not apply to defeat the appellant's defence. (See *The Mount Benger* case.)

The appeal is, therefore, allowed; and I order that, in place of the judgment entered in the Magistrate's Court in favour of the respondents, judgment be entered for the appellant.

Appeal allowed

Solicitors for the appellant: *Thorne, Thorne, White and Clark-Walker* (Auckland).
Solicitors for the respondent: *Brookfield, Prendergast, Schnauer and Smytheman* (Auckland).