Valuer-General v Wellington Rugby Football Union Inc - [1982] 1 NZLR 678

Court of Appeal Wellington
25, 26 August; 15 December 1982
Cooke and McMullin JJ, and Sir Clifford Richmond

Property law -- Valuation of land -- Maori reserve -- Special valuation of Athletic Park for rental purposes -- Principles of valuation -- Relevance of Government valuation -- Whether special valuation was valid -- Notice as to time for objecting gave lessee less than two months in which to object -- Notice of objection not filed in time -- Proceedings contesting valuation commenced four years after date of notice -- Whether lessee entitled to rely on time point -- Valuation of Land Act 1951, ss 2 and 11 - Maori Reserved Land Act 1955, ss 30, 31, 32 and 33.

On the expiry of its previous perpetually renewable lease of Athletic Park from the Maori Trustee, the Rugby Union in July 1970 elected under the Maori Reserved Land Act 1955 to take a prescribed lease in form A in the second schedule to that Act. Under the 1955 Act the rent was to be four percent per annum on a special valuation of the unimproved value of the land. The Government valuation as at 1 November 1969 was $86,200. In February 1974 the Maori Trustee applied to the Valuer-General for a special valuation. The special valuation, sent to the Maori Trustee on 29 May 1974, showed the unimproved value of the land at 1 August 1970 as $240,000. The Maori Trustee sent a copy of the certificate to the Rugby Union, care of its solicitors, under cover of a letter dated 1 July 1974. The period specified in the letter for objecting was less than the two months provided for in s 33 of the 1955 Act. Notice of objection was not filed in the time specified in the notice or within two months: in fact no objection was ever filed. However, on 9 September 1974, the Rugby Union's solicitors wrote to the Maori Trustee expressing consternation at the sharp increase and saying that the special valuation must have been made on a wrong principle, and asked for a reasonable extension of the time for objection. The Maori Trustee would not agree to an extension of time. In June 1975 it was agreed that the rent demanded would be paid without prejudice. Finally, in June 1978, the Rugby Union issued proceedings applying for judicial review of the special valuation. In the High Court the Judge held that both the notice of 1 July 1974 and the special valuation were invalid. The Valuer-General and the Maori Trustee appealed.

Held:

1 The special valuation was valid. There was nothing in the Valuation of Land Act 1951 or the Maori Reserved Land Act to suggest that either on revisions of district valuation rolls under ss 9, 10 and 11 of the former or on a special valuation under s 32 of the latter the Valuer-General must start on the assumption that the existing Government valuation was correct as at the date it was made. Whenever he was revising a valuation or making a special valuation the Valuer-General was required to arrive at correct values as at the material date, applying the definitions and principles stated in the Acts. This necessarily involved forming an opinion, and in forming that opinion the Valuer-General would be wrong to treat himself as fettered by the preceding valuation. Nevertheless, the legislation implicitly required that that the Valuer-General must have regard to the existing

Government valuation when making a revision or a special valuation. As the Court would not interpret an affidavit from the Valuer-General as meaning that he had ignored the 1969 Government valuation the High Court order quashing the special valuation and the consequential order to make a new one were vacated (see p 682 line 36, p 684 line 14, p 688 line 1).

2 The notice was defective in that, in fixing the time within which objections to the valuation might be made, the notice had given less than the two months required by s 33(4) of the Maori Reserved Land Act. Although the Rugby Union had raised the time point for the first time in proceedings not commenced until nearly four years later, the delay in commencing proceedings was counterbalanced by various factors (the lessor's delay in applying for the special valuation, the fact that the lessee had made it known shortly after the expiry of two months from the date of the notice that the special valuation was challenged, the startling increase in the figure and major differences between the opinions of val-

uers). Weighing the various factors, the Rugby Union should not be precluded from taking the time point and contesting the valuation on the merits. Accordingly the appeal from that part of the Chief Justice's decision declaring the notice of 1 July 1974 invalid was dismissed with the result that the Maori Trustee must give a fresh notice complying with s 33 (see p 682 line 7, p 688 line 35).

Cases mentioned in judgments

Ashby v Minister of Immigration [1981] 1 NZLR 222.

Burr (A J) Ltd v Blenheim Borough Council [1980] 2 NZLR 1.

CREEDNZ Inc v Governor-General [1981] 1 NZLR 172.

London & Clydeside Estates Ltd v Aberdeen District Council [1980] 1 WLR 182; [1979] 3 All ER 876.

R v Inland Revenue Commissioners, ex parte Knight [1973] 3 All ER 721.

Appeal

This was an appeal and cross-appeal from a judgment of Davison CJ (Wellington, A 281/78, 5 June 1980).

K G Stone for the first appellant (the Valuer-General).

H S Hancock for the second appellant (the Maori Trustee).

D J White and J S Beattie for the respondent (the Wellington Rugby Football Union Inc).

Cur adv vult

COOKE J.

These are appeals and a cross-appeal against a judgment of Davison CJ concerning the valuation of Athletic Park. On the expiry of its previous perpetually renewable lease of the park from the Maori Trustee, which was for 21 years from 1 August 1949, the wellington Rugby Football Union elected in July 1970 pursuant to the Maori Reserved Land Act 1955, s 28, to take a prescribed lease in form A in the second schedule to that Act. A practical difference between this and the former lease was that previously the rent was to be five percent per annum on a special valuation of the unimproved value of the land, whereas under the 1955 Act it is to be four percent.

The machinery laid down by the Act, so far as relevant, is that the Valuer-General, on application by the Maori Trustee, has to cause a special valuation to be made (s 30). Then he has to cause a certificate to be prepared setting forth among other things the unimproved value and the date at which the valuation is made. In determining the capital value or the unimproved value the Valuer-General has to proceed "as if the land were not subject to any lease, or to the right of any person to obtain a lease thereof" but otherwise, and subject to the

Act, as if he were determining values under the Valuation of Land Act 1951 (s 32). There are provisions in s 33, which will be set out in full later, for notices of valuation and rights of objection. The rent is four percent of the unimproved value as shown by the certificate or as amended by the (now) Land Valuation Tribunal as a result of objection (s 34).

For reasons not appearing in the evidence the Maori Trustee did not apply to the Valuer-General for the special valuation until February 1974. The valuation was then made and sent by the Valuer-General to the Maori Trustee on 29 May 1974. It showed the unimproved value of the land at 1 August 1970 as $240,000 - a striking contrast with the existing Government valuation as at 1 November 1969 which, after objection by the Rugby Union, had been fixed at $86,200. (The 1969 valuation in fact related to a slightly larger area.)

The Maori Trustee then sent a copy of the certificate to the Rugby Union, care of its solicitors, under cover of a letter dated 1 July 1974. This letter stated that the Union had a right of objection which must be lodged at the Administrative Division of the Supreme Court at Wellington before 1 September 1974. Exactly when the letter was received by the solicitors is not clear, but it is common ground that the period specified for objecting was in effect less than two months and therefore not strictly in accordance with s 33, to be set out shortly.

For reasons connected with the absence overseas of the partner in the firm of solicitors dealing with the matter, notice of objection was not filed in the time specified in the notice or within two months. Indeed no objection ever has been filed. On 9 September 1974, after his return, the partner concerned wrote to the Maori Trustee, explaining the delay, expressing consternation at the sharp increase and saying that the special valuation must have been made on a wrong principle. He suggested that account may have been taken of certain works which were improvements within the meaning of the Valuation of Land Act. He asked for a reasonable extension of the time for objecting.

By letter dated 3 October 1974 the Maori Trustee replied that, having regard to his duty to his beneficiaries, he was not prepared under any circumstances to extend the time. Among other things he also mentioned that he did not agree that there was any evidence of the valuation proceeding on an incorrect basis.

There the matter rested until June 1975, when it was agreed that the rent demanded be paid without prejudice in the meantime, which has been done since August 1975. Some two years or more later the Rugby Union instructed new solicitors. There was then a further period of delay, occasioned mainly by the death of the Union's then valuer, Mr J W Gellatly, in January 1978. Ultimately the proceedings now under appeal were issued in June 1978. It is accepted for the appellants that this further period of delay may be treated as immaterial.

The proceedings are an application for judicial review of the special valuation under the Judicature Amendment Act 1972. The grounds alleged are that the Valuer-General "failed to give any consideration or any proper consideration" to three relevant consideration - namely, the 1969 Government valuation, the remoteness of the chance of removing the "private reserve" designation over Athletic Park, and s 43 of the Valuation of Land Act 1951 - and that he and/or the Maori Trustee in requesting, serving and making the special valuation failed to comply with the requirements as to time of the Maori Reserved Land Act 1955.

In his judgment the Chief Justice held that the notice of 1 July 1974 was invalid because of the two months point; and that accordingly, if the special valuation stood, the Maori Trustee would now simply have to serve a fresh notice, and the Rugby Union would then be able to object. But he went on to hold that the special valuation itself was also invalid, on two grounds. First that the valuer had ignored the 1969 Government valuation, whereas if it had been taken as a starting point, as the Chief Justice said it must, $240,000 could never have been justified. Secondly that the valuer had failed to apply s 43 of the Valuation of Land Act 1951, a

provision repealed in 1970, but on the argument in this Court not disputed to have been in force at the time relevant for this case. Section 43 provided in short for a reduction in certain circumstances in the assessment of the unimproved value of land used by sports bodies. On the other hand the Chief Justice rejected a contention for the Rugby Union that in assessing the chance of having the designation changed the valuer had failed to take into account relevant matters and addressed himself to irrelevant ones.

In the result the Chief Justice quashed the special valuation and directed that the Valuer-General begin afresh on the basis of the interpretation of the law laid down in the Judgment. The three parties now appeal respectively against different parts of the Judgment.

The notice

Section 33 of the Maori Reserved Land Act 1955 as it stood at the material time read:

> **"33. Notice of valuation and right of objection thereto** -- (1) The Maori Trustee and the lessee shall have a right of objection to the Valuation Court in respect of every valuation made under section thirty of this Act.
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> (2) As soon as practicable after making any special valuation under section thirty of this Act, and upon the payment by the Maori Trustee of the fee for making the valuation, the Valuer-General shall, unless the Maori Trustee otherwise specifies, serve not less than three copies of the certificate prepared under section thirty-one of this Act on the Maori Trustee.
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> (3) The Maori Trustee shall thereupon serve a copy of the notice on the lessee, together with a notice that objections to the valuation to which the certificate relates may be lodged in the manner and within the time specified

in the notice.

(4) In every notice given by the Maori Trustee under subsection three of this section, the Maori Trustee shall fix the time within which objections to the valuation may be made, being in each case a period not less than two months after the date of the notice, and shall specify the office of the Valuation Court in which objections shall be filed.

(5) Nothing in this section shall be construed to prevent the Maori Trustee and the lessee waiving their respective rights of objection to the valuation to which the certificate relates, but, where the Maori Trustee and the lessee do not agree to waive their respective rights, the Maori Trustee shall file a copy of the certificate of valuation in the appropriate office of the Valuation Court.

(6) If the lessee or the Maori Trustee objects to any of the values as appearing in the certificate, he may, within the time specified in that behalf in the notice given by the Maori Trustee, file an objection to the valuation in the appropriate office of the Valuation Court.

(7) Every objection filed as aforesaid shall specify the several items to which the objection relates, and, with respect to each item, shall specify the grounds of the objection.

(8) On the Filing of any such objection by the lessee, the Registrar of the Valuation Court shall forthwith give to the Maori Trustee and to the Valuer-General notice of the filing of the objection and of the terms thereof, and, where the objection is filed by or on behalf of the Maori Trustee, the Registrar shall give a like notice to the lessee and to the Valuer-General.

(9) For the purposes of this section the appropriate office of the Valuation Court shall be the office of the Court for the district in which is situated the land to which the valuation relates."

In giving less than two months, albeit only two days or so less, the Maori Trustee's notice under subs (4) failed to comply with the Act. There can be no

doubt that if the Rugby Union had taken the point promptly, and if it had been contested, the Court would have granted the Union appropriate relief, such as a declaration that the notice was ineffective and that a fresh one would have to be given. And relief would have been granted no matter whether the provision for two months is to be described as mandatory or directory - labels perhaps not very helpful in the present context, though I think mandatory more appropriate.

But the question is whether the Union can be heard to take the point for the first time in proceedings not commenced until nearly four years later. On the approach indicated, for instance, by Lord Hailsham LC in London & Clydeside Estates Ltd v Aberdeen District Council [1979] 3 All ER 876, 880-883; [1980] 1 WLR 182, 186-190, and applied by this Court in A J Burr Ltd v Blenheim Borough Council [1980] 2 NZLR 1, I am inclined to think that the defect should not be treated as automatically rendering the whole notice a nullity ab initio. There is little attraction in the view that after so long an interval the lessee can as a matter of right assert that the notice did not validly limit the time for objecting. For the reasons which follow, however, I do not think it strictly necessary to decide that question.

Approaching the point as one of discretion, several factors counterbalancing the lessee's delay are to be noted. The lessor delayed initially for some three and a half years in applying to the Valuer-General for the special valuation. The lessee made known that the special valuation was challenged as made on a wrong principle within about a week after the expiry of two months from the date of the notice. From at least the time of the without prejudice arrangement in mid-1975 the lessor knew that a contest was likely failing settlement. When the proceedings were issued in the Supreme Court the 21 year term for which the rent in question is to apply still had some 13 years to run.

Last - and this carries particular weight, I think - the startling increase in the figure and major differences which have emerged between the opinions of valuers, as appears from the affidavits, show a genuine and substantial dispute involving questions of principle which may well be both difficult and important.

Weighing the various factors, I think that the Rugby Union should not be precluded from taking the time point and contesting the valuation on the merits, and accordingly that the part of the Chief Justice's decision declaring the notice invalid should stand.

The special valuation: relevance of 1969 figure

It is now necessary to turn to the two grounds on which the Chief Justice held the 1970 special valuation (made in 1974) invalid. As to the first of these, I can find nothing in the Valuation of Land Act 1951 or the Maori Reserved Land Act 1955 to suggest that either on revisions of district valuation rolls under ss 9, 10 and 11 of the former or on a special valuation under s 32 of the latter the Valuer-General must start on the assumption that the existing Government valuation was correct as at the date when it was made. Government valuations are conclusive for certain purposes. For instance they are the basis of valuation rolls for districts under the Rating Act 1967, s 47. But whenever he is revising a

valuation or making a special valuation the Valuer-General is required to arrive at correct values as at the material date, applying the definitions and principles stated in the Acts. This necessarily involves forming an opinion, as valuation is not an exact science, and in forming that opinion the Valuer-General would be wrong, I think, to treat himself as fettered by the preceding valuation. To read such a fetter into the Acts would be to provide for the perpetuation of error.

On the other hand it would be good valuation practice to take the previous valuation into account and before forming a final opinion to consider what reasons there are for any differences. Indeed the existing Government valuation is such an obvious consideration that in my opinion the Court can and should hold that

the legislation implicitly requires that the Valuer-General must have regard to it when making a revision or a special valuation. This is an application of the principle as to statutory discretions referred to in CREEDNZ Inc v Governor-General [1981] 1 NZLR 172, 182-183, 197, 207, and Ashby v Minister of Immigration [1981] 1 NZLR 222, 226, 233. It is possible that the Chief Justice meant to go no further than this, although some of his actual language seems to do so.

Mr White submits that an affidavit sworn on 29 January 1979 by Mr J G Gibson, the District Valuer responsible for the special valuation, shows that no regard was had to the existing Government valuation. At that stage an affidavit sworn on 16 June 1978 by Mr J N B Wall had been filed for the lessee in which Mr Wall had expressed the view inter alia that the proper starting point for the special valuation would have been the 1969 Government valuation. Mr Gibson said on this point:

> "7. The 1969 statutory government valuation was not a determining factor in making the special valuation for the Maori Trustee and in my view should be ignored. It is unusual for any valuer to index a previous valuation for whatever purpose. It has never been my practice to 'plus up' a previous valuation for the basis of a fresh valuation. I have always maintained and followed the method of researching the sales evidence available and basing my valuation upon that evidence."

He was not cross-examined on his affidavit. The word "ignored" literally supports Mr White's submission, but the context suggests that Mr Gibson may have meant merely that (rightly) a fresh approach was made; and that the existing valuation was regarded as of no weight - presumably because of Mr Gibson's opinion, stated in later paragraphs of his affidavit, that as at 1 August 1970 there was a 95% chance of removing the reserve designations on Athletic Park. (The designation was Private Reserve, with an underlying designation of Public Reserve, and an underlying zoning of Residential C.) It would have been extraordinary if Mr Gibson had literally ignored the 1969 figures. All in all it does not seem to me that we can safely or fairly conclude that he did. Accordingly, although not without some hesitation, I would hold that the special valuation was not invalid on this first ground.

The special valuation: sports ground reduction

[His Honour then dealt with the second ground, namely that the valuer had failed to apply s 43 of the Valuation of Land Act 1951, agreeing with Sir Clifford Richmond that s 43 did not apply.]

The cross-appeal

It is also possible to deal briefly with the cross-appeal. Having considered what Mr White submitted both orally and in writing, I am in full agreement with the Chief Justice that the lessee has not demonstrated that in estimating the chance of removing the reserve designations the Valuer-General made an error of principle regarding the relevant considerations. The wide range in the estimates of the valuers who have made affidavits, extending from a 10% chance to virtually 100%, certainly suggests differences in principle, but it is not possible on the affidavits to pinpoint with any confidence where any such differences lie.

As the Chief Justice said, the whole issue is best left to be explored in evidence and cross-examination on the objection which the lessee will undoubtedly be able to pursue when the lessor gives a fresh notice, which will now of course be necessary. Some of the contentions for the lessee under this head may not be open in judicial review proceedings. Be that as it may, the alternative remedy of objection (and, if necessary, appeal) is plainly more appropriate. On that ground I would dismiss the cross-appeal.

As previously indicated, I would allow the appeal in part by vacating the order quashing the special valuation and the consequential order to make a new one, but dismiss the appeal against the declaration that the notice of 1 July 1974 was invalid.

The Court being unanimous there will be orders accordingly. The order for costs in the High Court will be vacated and there will be no order for costs in either Court.

McMULLIN J.

I have read the judgments of Cooke J and Sir Clifford Richmond and am in general agreement with them. But I set out in short form my own conclusions on the two matters only on which we are disagreeing with the Chief Justice on this appeal and cross-appeal. They are:

1. The relevance of the 1969 Government valuation in the making of the 1970 special valuation

The valuation made as at 1 November 1969 resulted from a revision of the district valuation roll. It was made in terms of s 11 of the Valuation of Land Act 1951 which required the Valuer-General to amend the existing roll to ensure that the revised values represented the correct values as at the time of the revision and to make such fresh valuations as were required. The values with which the revision sections (ss 10 and 11) were concerned were values defined by reference to open market conditions (s 2) prevailing at the time the valuation was made. The valuation made on 1 August 1970 was a special valuation but there is nothing in the Valuation of Land Act 1951 nor in ss 30-32 of the Maori Reserved Land Act 1955 to suggest that a departure from open market conditions was to be made. I cannot read the words "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" as permitting, much less requiring, the Valuer-General to make a special valuation using the 1969 roll valuation as a datum point to or from which additions or deductions (as the case may be) should be made to reflect intervening changes. The words "so as to represent the correct values" should be regarded as empowering rather than limiting. Construed in that way the Valuer-General was free to fix values as at 1 August 1970 in accordance with the definition given to "unimproved value" by s 2 and, having reached such a value by the hypothetical vendor and purchaser approach, to adjust the 1969 roll valuation if, and to the extent, required.

The increase in the unimproved value of Athletic Park between 1 November 1969 and 1 August 1970 from $86,200 to $240,000 is so startling as to suggest that no regard at all to the 1969 valuation was paid by the District Valuer in making the 1970 valuation. A valuation made only nine months before, and forming part of a revision of values in the whole district, was a matter of such significance as to warrant consideration, if, in the light of other relevant circumstances, it was ultimately thought to be of little or no weight. I would therefore regard the 1969 valuation as a relevant matter to which the Valuer-General should have had regard in making the 1970 value. Was proper regard then paid to it? In his affidavit Mr J G Gibson, District Valuer, said:

> "7. The 1969 statutory government valuation was not a determining factor in making the special valuation for the Maori Trustee and in my view should be ignored. It is unusual for any valuer to index a previous valuation for whatever purpose. It has never been my practice to 'plus up' a previous valuation for the basis of a fresh valuation. I have always maintained and followed the method of researching the sales evidence available and basing my valuation upon that evidence."

If the passage quoted had stopped at the end of the first sentence I think that Mr White would have been justified in his submission that no regard at all was paid to the 1969 valuation. But that sentence is only part of a larger statement in which Mr Gibson went on to reject the "plus up" approach in which an existing valuation is elevated to the status of a benchmark to which only such adjustments are made as are necessary to take account of intervening changes. In the light of what Mr Gibson said in the full paragraph it would be unfair to infer from the first sentence of it that in making the 1970 valuation he had completely ignored the earlier one.

I add an observation on the obligation of the Valuer-General in making a special valuation under s 30 of the Maori Reserved Land Act 1955. He must ascertain the values by reference to the definitions in s 2 of the Valuation of Land Act

1951 - that is on the open market approach giving such weight in doing so to the existing roll valuation as the circumstances require. But if he thinks that the existing roll valuation was wrongly made he is free to reflect that opinion in the new and special valuation that he makes. Otherwise he will not be giving full effect to the relevant "value" definitions in s 2.

2. Should s 43 of the Valuation of Land Act 1951 have been applied in the present case?

[His Honour then dealt with this question, concluding that s 43 should not have been applied to reduce the value of Athletic Park.]

I agree that the appeal should be allowed in terms indicated by Cooke J in his judgment and that the cross-appeal should be dismissed.

SIR CLIFFORD RICHMOND.

There is no need for me to repeat the facts. I accordingly turn at once to the various legal issues which were argued when the present appeal was heard.

1. Ought the Valuer-General to have "as his starting point taken into account the 1969 Government valuation of Athletic Park as being correct at that time"?

He is so directed by para 3(a) of the formal order of the High Court. This order reflects the acceptance by the Chief Justice of an argument advanced on behalf of the respondent, both in the Court below and again in this Court, to the effect that the 1969 Government valuation of Athletic Park was a relevant matter which as a matter of law the Valuer-General was bound to take into consideration when making the special valuation for rental purposes which was requested by the Maori Trustee.

In the statement of claim it was alleged that the Valuer-General had failed to give any consideration or any proper consideration to the 1969 valuation which fixed the unimproved value at $86,200 (further reduced to $45,100 under s 43 of the Act) as at 1 November 1969. The special valuation (made in 1974 but fixing the value as at 1 August 1970) put the unimproved value at $240,000 (no reduction being made under s 43). Not surprisingly the Chief Justice found it incredible that the value should have increased to such an extent in nine months.

The special valuation as at 1 August 1970 was made by Mr J G Gibson, who held the position of District Valuer, Wellington. He made an affidavit on behalf of the Valuer-General. His affidavit was sworn on 29 January 1979 and to a certain extent was in answer to an affidavit sworn on 16 June 1978 by Mr J N B Wall, a registered valuer retained by the respondent. In that affidavit Mr Wall had expressed the opinion that "the proper starting point for the special valuation would have been the 1969 Government valuation of Athletic Park". Also that the latter valuation "which was accepted by all parties, was in my view a correct valuation

at the time". He also pointed out that the area of land comprised in the 1969 valuation was nearly an acre greater than the 9 acres 34.98 perches comprised in the special valuation. Mr Wall's affidavit then continued:

> "12. The general increase in the price of residential sections in Wellington for the 12 month period 1969-1970 was only 7%. This is shown by the residential section price index on page 70 of the 'The Real Estate Market in New Zealand 1976' issued by the New Zealand Valuation Department, a copy of which is attached hereto and marked with the letter 'C'. If this increase had been applied to the 1969 unimproved value of Athletic Park of $86,200 the 1970 unimproved value would have been $92,234, without making any adjustment for the different areas involved in the two valuations which would have had the effect of further reducing the 1970 figure. There is no reason why any different criteria should have been applied in calculating the increase in the unimproved value of Athletic Park.
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> 13. For these reasons alone I am unable to understand how the first respondent could have fixed the unimproved value of Athletic Park at $240,000 as at 1 August 1970. In order to test my view, however, I have disregarded the 1969 Government valuation and I

have carried out my own 'special valuation' of the unimproved value of Athletic Park as at 1 August 1970. My valuation of the unimproved value would be $113,000."

After explaining the approach which he adopted in making his own valuation Mr Wall continued:

19. My valuation of the unimproved value of Athletic Park as at 1 August 1970 is therefore as follows:

As designated 'Private Reserve'	$100,000
As 'Residential C'	230,000
Difference	$130,000
Chance of removing designation	
10% OF $130,000 = $13,000	
Unimproved value therefore	$113,000

20. I note that my valuation of the unimproved value, which was made without regard to the 1969 Government valuation, is not far removed from the figure of $92,234 which 1 referred to in paragraph 12 above. In my view this confirms that the valuation by the first respondent was made erroneously."

As against that background I return to Mr Gibson's affidavit. The following paragraphs are of particular relevance:

"7. The 1969 statutory government valuation was not a determining factor in making the special valuation for the Maori Trustee and in my view should be ignored. It is unusual for any valuer to index a previous valuation for whatever purpose. It has never been my practice to 'plus up' a previous valuation for the basis of a fresh valuation. I have always maintained and followed the method of researching the sales evidence available and basing my valuation upon that evidence.

8. The residential section price index for Wellington City, which increased by 7% from December 1969 to December 1970, related to Residential 'A' zoned land only, this being low density development. Residential 'C' zoned land permits high density development, and is a completely different market from that of Residential 'A'. To base a valuation on this percentage increase would be completely erroneous."

"14. My valuation of Athletic Park as at 1 August 1970 was:

as designated 83,000

as Residential 'C' 245,000

difference 162,000

value of 'chance' at 95% 153,900

add back basic value 83,000

236,900

rounded off to 240,000"

It will be seen that Mr Wall and Mr Gibson are not very far apart in their views as to the value of the land (i) as designated and (ii) as Residential "C". The difference between their final figures ($ 113,000 and $240,000) stems from their widely differing views as to the chances of obtaining removal of the designations of the land as a reserve. Mr Wall put the chance at 10%. Mr Gibson estimated it at 95%. I now turn in more detail to the legal argument advanced by Mr White to support the proposition that the Valuer-General, when making the special valuation, was as a matter of law obliged as his starting point to have regard to the 1969 valuation as being correct as at I November 1969.

The 1969 valuation was prepared in the course of a periodical revision of the district valuation roll. Section 11 of the Valuation of Land Act 1951, at the relevant time, described the duty of the Valuer-General, when making any such revision, in the following terms:

"For the purposes of any revision under the foregoing provision of this Act the Valuer-General shall the roll by making all such alterations as are necessary in order that the capital and unimproved values and value of improvements and, where applicable, the special rateable value or the rates postponement value 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."

Mr White placed reliance on the words "so as to represent the correct values as at the time of revision". He submitted that the revised valuations, as adjusted consequent upon any objections, are thereafter to be regarded in law as correct at the time they were made. Hence it is said that when he was called on to make a special valuation as at 1 August 1970 the Valuer-General was obliged to proceed on the basis just described; in other words he was precluded from making a special valuation at a figure which could only be correct if the existing roll valuation was wrong.

In my opinion this submission seeks to give unjustifiable effect to s 11. I read that section as going no further than to require the Valuer-General to estimate the correct values as at the date of revision and make consequential alterations to the roll. No doubt the revised valuations are conclusive for certain specific purposes, such as rating, defined either in the Valuation of Land Act or in other legislation, but nowhere is it provided that revised roll valuations are to be deemed correct for all the purposes of the Valuation of Land Act. If Mr White's argument is correct then logically it should apply not only to special valuations but also to succeeding revisions of the valuation rolls. Yet under s 11 the emphasis is on arriving at the correct values at the time of revision. It would stultify this purpose if the Valuer-General were required to approach his task powerless to escape from opinions held in the past. Similar principles must apply to the making of a special valuation. I am not therefore prepared to regard s 11 as having the effect attributed to it in the judgment of the High Court.

As an alternative submission Mr White contended that even if he was not bound by law to treat the 1969 valuation as correctly determining the value as at 1 November 1969 the Valuer-General was at least bound by law, when making the special valuation, to have regard to the 1969 valuation. Then Mr White asks us to interpret para 7 of Mr Gibson's affidavit as meaning that Mr Gibson did not address his mind at all to the 1969 valuation.

Neither the Maori Reserved Land Act nor the Valuation of Land Act contain any express requirement to the foregoing effect. In order that this alternative submission could succeed the Court would therefore need to be satisfied that such a requirement is nevertheless implicit in the legislation - see CREEDNZ Inc v Governor-General [1981] 1 NZLR 172 at 172 at 182-183; Ashby v Minister of Immigration [1981] 1 NZLR 222. I am inclined to think that it is, and I shall so assume in favour of the respondent. I am inclined to think that it is, and I shall so assume in favour in his affidavit as meaning that he ignored the 1969 valuation in the sense that he did not address his mind to it at all. What he says is quite consistent with his having considered the existing valuation and then found himself in such complete disagreement that he decided to give it no weight. Mr Gibson was not cross-examined on any part of his affidavit and when that affidavit was prepared his mind would naturally have been directed to the suggestion made by Mr Wall as to the need to take the 1969 valuation as a starting point rather than to a possible suggestion that he had had in regard to it whatsoever.

I am therefore of opinion that the particular order of the High Court now under consideration should be vacated.

2. Should s 43 of the Valuation of Land Act 1951 have been applied in the present case?

[His Honour then dealt with this question, concluding that the Valuer-General had adopted the correct course when he made no reduction in terms of s 43 to the unimproved value of the land.]

3. The cross-appeal

For the reasons given by Cooke J I also am in full agreement with the conclusion arrived at by the Chief Justice on this aspect of the case.

4. The notice

I am in agreement with the way this question has been dealt with by Cooke J and with his conclusions that the declaration of invalidity made in the High Court should stand with the result that the second appellant must now give a fresh notice complying with the provisions of s 33 of the Maori Reserved Land Act 1955. This will put beyond doubt the right of the respondent to exercise, even at this late stage, the right of objection conferred upon it by that section. My only additional comment is that I would prefer to leave open the question whether that right of objection cannot be exercised unless and until a valid notice is given under subss (3) and (4). There may well be an argument in favour of in-

terpreting the words "within the time specified", as they appear in subs (6), in the sense of "not later than the time specified" - see R v Inland Revenue Commissioners, ex parte Knight [1973] 3 All ER 721 (CA).

5. Conclusion

I agree that the appeal should be allowed to the extent which Cooke J has proposed and that the cross-appeal should be dismissed.

Appeal allowed in part; cross-appeal dismissed.

Solicitor for first appellant: Crown Solicitor (Wellington).

Solicitors for second appellant: Watts & Patterson (Wellington).

Solicitors for respondent: Young, Swan, McKay & Co (Wellington).