IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Shaw Island Owners Association v. Nova Scotia (Assessment), 2004 NSSC 184

Date: 20040924
Docket: S.BW. No. 204268
Registry: Bridgewater

Between:

Shaw Island Owners Association

Applicant

-and-

Director of Assessment

Respondent

Judge: The Honourable Justice Robert W. Wright

Heard: By written submissions filed July 30, August 16 and 31, 2004

Written Decision: September 24, 2004

Counsel: Counsel for the Applicant - Blair Hodgman
Counsel for the Respondent - Kirby Eileen Grant

By the Court:

[1] In an earlier decision in this proceeding, reported as 2004 NSSC 117, the court ruled that the Shaw Island Owners Association (the "Association") constituted a non-profit recreational organization and that its 13 acre property was used directly and solely for the purposes of the Association as a recreational organization, thereby entitling it to a partial tax exemption under s.29(2) of the *Assessment Act*. The property is comprised of 3 subdivided waterfront lots and a contiguous 10 acre interior lot.

[2] After reaching that conclusion, I deferred the further issue of how the ensuing municipal tax calculation ought to be formulated, preferring to leave that calculation to the Director of Assessment to be made in accordance with its standard policies governing partial tax exemption properties. I then expressly reserved jurisdiction to address that issue on a future occasion if indeed further judicial intervention was required. As it happens, the parties continue to disagree on the identity and number of acres to which the partial tax exemption should apply.

[3] The jurisdiction of the court to decide this further issue has since been challenged by the Director. Counsel for both parties have agreed to have this jurisdictional issue resolved in a preliminary fashion as the next step, rather than risk embarking simultaneously on a consideration of the merits, with consequent time and expense, only to find later that there was a lack of jurisdiction. Counsel have further agreed to proceed by way of written submissions.

[4] The dispute is brought about by differing interpretations of the jurisdictional provisions of the *Assessment Act* found in ss. 29(12), 62(1) and 94(1) and how they interrelate. These provisions, including the introductory paragraphs of s.29, read as follows:

> 29(1) All land in excess of three acres of any non-profit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization or institution, excluding any buildings or structures thereon, that is subject to taxation and that is used directly and solely for the purposes of the non-profit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization or institution shall be exempt from taxation under this Act or any other general or special Act of the Legislature authorizing a tax on the assessed value of property except as provided in the *Municipal Government Act*, ...
>
> (2) Where this Section applies to a property, or part thereof, the property shall be assessed as commercial property partly exempt from taxation pursuant to Section 40, but shall be separately identified and the number of acres to which this Section applies shall be set out on the roll.
>
> (12) An assessment under subsection (7), a determination that land has ceased to be used for a purpose set out in subsection (1) and **a determination of acreage under subsection (2) may be appealed in accordance with Sections 62 and 63.** (Boldface added)
>
> 62(1) Any person complaining that he has been wrongfully inserted in or omitted from the assessment roll or that his property has been undervalued or overvalued by the assessor or that his property has been wrongfully classified may give notice in writing to the recorder that he appeals from the insertion, omission, valuation or classification and shall give a name and address where notices may be served upon him by the recorder.
>
> 94(1) The municipality, the Director or any person assessed may apply on originating notice to the Supreme Court or to the county court for the determination of any question relating to the assessment, except a question as to persons alleged to be wrongfully placed upon or omitted from the roll or assessed at too high or too low a sum or whose property is wrongly classified.

[5] The submission on behalf of the Director is that the "determination of acreage" (viz. the identity and number of acres to which the partial exemption applies) under s. 29(12) falls within the jurisdiction of the Regional Assessment Appeal Court and its appellate body, the Nova Scotia Utility and Review Board. The foundation of this argument essentially is that a determination of acreage under s.29(12) may be appealed in accordance with ss. 62 and 63 which in turn are the provisions conferring jurisdiction upon the Regional Assessment Appeal Court. It is argued that s.94(1) is designed to exclude the main areas of the Regional Assessment Appeal Court's jurisdiction from the jurisdiction of the Supreme Court and that the legislative intention is to provide only the one route of appeal on a determination of acreage dispute, namely, to the Regional Assessment Appeal Court.

[6] The flaw in this argument is that the Supreme Court does not derive its jurisdiction residually from s.29(12), but rather derives its jurisdiction directly from s.94(1). This section confers jurisdiction on the Supreme Court to determine <u>any question relating to the assessment</u>, except the three specified areas reserved to the Regional Assessment Appeal Court. As Justice Chipman recently stated in *Griffith v. Middleton (Town)* [2004] N.S.J. No. 224 at para. 24 (which there involved a valuation issue):

> The legislation is, in my view, clear. Questions other than as to persons properly on or off the roll and valuation and classification of properties are to be determined by the Supreme Court on application pursuant to s.94(1) of the *Act*.

[7] Plainly, the present dispute over determining the acreage to which the partial tax exemption should apply, and the related tax calculation, cannot be categorized as an issue of the insertion or omission of a person from the roll, nor of the valuation or classification of property. The inescapable conclusion, therefore, is that the Supreme Court does have jurisdiction to decide the issue still outstanding between the parties, should the Association and the Director continue to disagree on how the partial tax exemption should be applied to the property in question.

[8] It may well be that s.29(12) ought to be interpreted as conferring overlapping jurisdiction on the Regional Assessment Appeal Court for determination of acreage issues. It is difficult to say what the legislative intent was, given the incongruity between s.29(12) and s.94(1). In any event, I need not make any definitive finding of how broadly s.29(12) ought to be interpreted, for purposes of this decision. However its words might be construed, it cannot trump s.94(1) of the *Act* which, in my view, clearly confers jurisdiction upon the Supreme Court to decide the issue at hand. I might add that the issue at hand essentially involves a question of law which is properly within the domain of the Supreme Court.

[9] It therefore remains for the Director, with the assistance of the assessors, to make a formal determination of which part of the Association's acreage it proposes to tax and which part is to be partially exempt from taxation as part of his statutory duty under sections 25 and 40 of the *Assessment Act*. If the Association is aggrieved by the Director's determination of the identity and number of acres to which the partial tax exemption should apply, and the resulting tax calculation

(which appears inevitable from the submissions of counsel to date), the Association shall be at liberty to bring such outstanding dispute before this court for resolution.

[10] In anticipation of further proceedings in this case, I will reserve on the question of costs until the final outcome.

J.