THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF TISDALE..... APPELLANT;

AND

HOLLINGER CONSOLIDATED GOLD MINES LIMITED ..... RESPONDENT.

1933

*Feb. 16, 17.
*April 25.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO

Assessment and taxation—Assessment Act, R.S.O., 1927, c. 238, s. 40 (4)—Exemption (from assessment) of "the buildings, plant and machinery in, on or under mineral land, and used mainly for obtaining minerals from the ground" and "concentrators."

A system for disposal of the slimes from which mineral had been extracted, *held* to be an absolutely essential part of the effective separation of the minerals from the dross, and therefore part of a "concentrator" within s. 40 (4) of the *Assessment Act*, R.S.O., 1927, c. 238, and exempt from assessment. (Definition of "concentrator," within s. 40 (4), in *Re McIntyre Porcupine Mines Ltd. and Morgan*, 49 Ont. L.R. 214, at 218, adopted and applied). The Act aims at exempting such means as may be adopted at the mining location to aid in the concentrating of the ore mass.

The scope of the exemption in said s. 40 (4) of "the buildings, plant and machinery in, on or under mineral land, and used mainly for obtaining minerals from the ground," discussed, with regard to the general scheme of taxation as disclosed in s. 40 (4), (5) and (6). *Held*, that said exemption covers all buildings, plant and machinery (situated upon mineral lands) which form an essential part of the system actively in operation in obtaining the minerals, and is not confined to what is used *directly* in getting out the minerals.

Buildings, plant and machinery held exempt in the present case included (*inter alia*): a "change house," boiler house and heating system, power line, electric railway, powder magazine, and a "conveyor system" (to transport sand or gravel to fill in the space left in the mine by extraction of rock; and including, *inter alia*, compressor house, locomotive and cars, electric shovel, railway track, power transmission lines, and conveyor equipment, including steel towers, cables, buckets, etc.)

No appeal lies from a decision of the Ontario Railway and Municipal Board under s. 83 of said Act on a question of fact; therefore where the Board has found as a fact that lands in question were mineral lands within the meaning of s. 40 (4), an appellate court (if finding no error of law or of statute construction involved in the Board's finding) is precluded from interfering with such finding.

Judgment of the Appellate Division, Ont., [1931] O.R. 640, affirmed, on above grounds.

*PRESENT:—Rinfret, Lamont, Smith, Cannon and Crocket JJ.

1933

TOWNSHIP OF TISDALE v. HOLLINGER CONSOLIDATED GOLD MINES LTD.

APPEAL from the judgment of the Appellate Division of the Supreme Court of Ontario (1) dismissing an appeal by the present appellant and allowing an appeal by the present respondent from an order of the Ontario Railway and Municipal Board on appeals to the said Board from decisions of His Honour Judge Caron, Judge of the District Court of the District of Temiskaming, in respect of assessment by the appellant township for the year 1929 of certain property of the respondent mining company.

The material facts of the case and the questions in dispute are sufficiently stated in the judgment now reported. The appeal was dismissed with costs.

Peter White K.C. and *G. H. Gauthier* for the appellant.

R. S. Robertson K.C. and *P. C. Finlay* for the respondent.

The judgment of the court was delivered by

CANNON J.—This is an appeal from the judgment of the First Appellate Division of the Supreme Court of Ontario (1) dismissing an appeal by the present appellant and allowing an appeal by the present respondent from an order of the Ontario Railway and Municipal Board delivered on the 28th of October, 1930, on appeals to the said Board by both the appellant and the respondent from decisions of His Honour Judge Caron, delivered in September, 1929, in respect of assessment by the appellant township for the year 1929 of certain property of the respondent mining company.

Section 83 (6) of chap. 238, R.S.O., 1927, enacts that

> An appeal shall lie from the decision of the Board under this section to a Divisional Court upon all questions of law or the construction of a statute, * * *.

The disputed assessments are in respect to land, including the buildings, plant and machinery thereon.

The respondent claims:

(1) that it is not assessable under section 40, subsection 4, of same Act, which reads as follows:

> 40 (4). The buildings, plant and machinery in, on or under mineral land, and used mainly for obtaining minerals from the ground, or storing the same, and concentrators and sampling plant, and, subject to subsection 8, the minerals in, on or under such land, shall not be assessable.

and

(1) [1931] O.R. 640; [1931] 4 D.L.R. 239.

(2) that it is not assessable with respect to chattel property, and

(3) that, in any case, property situated on the land of other owners was not legally assessed at all by the appellant.

The questions as to whether or not the buildings, plant and machinery are in or on mineral land, and are used mainly for obtaining minerals from the ground, or form part of the concentrators, are not exclusively of fact. The Ontario Railway and Municipal Board having found that the property attempted to be assessed is situate on "mineral land," it seems, as found by the Supreme Court of Ontario, that, upon the evidence adduced and the findings of the Board, we would be precluded from interfering therewith, if we agree, in law, with their view as to the meaning of the statute. The construction of a statutory enactment is a question of law, while the question of whether the particular matter or thing is of such a nature or kind as to fall within the legal definition of its term is a question of fact.

The County Judge and the Board have also found that the slimes disposal system formed part of the "concentrators," which are not defined by the Act, but were defined by the Appellate Division of the Supreme Court of Ontario, in *Re McIntyre Porcupine Mines Ltd. and Morgan* (1), as follows: Any process the purpose of which is the separation of the valuable mineral from the dross is a concentrating process, and the buildings and plant used for that purpose are, within the meaning of subsection 4, a concentrator. We feel that this should also apply to the machinery used to dispose of the refuse in this case. The *Assessment Act,* in this particular, aims at exempting such means as may be adopted at the mining location to aid in the concentrating of the ore mass. It is for the court to interpret the statute as best they can.

Now, upon the evidence and the unanimous findings of the District Judge, the Railway Board and the Appellate Division, the fact must be recognized that this disposal system of the slimes from which the mineral has been extracted is an absolutely essential part of the effective separation of the minerals from the dross. Without such

(1) (1921) 49 Ont. L.R. 214, at 218.

1933

TOWNSHIP OF TISDALE v. HOLLINGER CONSOLIDATED GOLD MINES LTD.

Cannon J.

system, it would be impossible to continue operating the mine, which would become choked with refuse; and the obtaining of minerals from the ground would be stopped.

Another large item in dispute is the conveyor system and the buildings, plant and machinery in connection therewith, which is $147,614, $140,389 of which assessment is in appeal, the respondent accepting the assessment of $6,770 on three buildings and the assessment of $454 on the change house at the gravel pit. The respondent excavates 4,400 tons of mineral bearing rock per day; and, in order to avoid a collapse of the whole work, they have to fill the vacant space left by the rock excavated, in order to continue the mining operations. In view of the nature of the tailings which are slimes the respondent has to fill back with sand or gravel, which is carried by an overhead conveyor from sand claims located at more than two miles from the workings.

The sand is mined on the "Sand Claims," being dug out of the side of the bank by an electrically operated shovel, as the bank recedes it is moved nearer the bank so as to be always near enough to load the sand from the face of the bank to the cars on the other side. The cars into which the sand is loaded are a special type of side dump cars which are heated in the winter time. These cars are on a narrow gauge railway track laid on ties and sleepers, and as the sand bank recedes the track must be moved continuously towards the bank. These cars are drawn along the railway by the dinky locomotive from the electrically operated shovel to the lower hopper into which the sand is dumped. From this hopper there is a belt conveyor which inclines down to another hopper which is covered with bars for screening, and a belt comes from the under side of one hopper to the upper side of the other in order to elevate the sand and get it in the bottom of the hopper. The sand is loaded from the hopper by machinery into the buckets which are attached to the conveyor and carried to the central shaft.

The compressor house referred to in the Assessment Schedule houses the compressor which is used for the purpose of operating the loading gate and the gate in the hopper that loads the buckets. The oil house on the "Sand Claims" is used for storing oil in drums. The gravel load-

ing station, face of gravel bin, is a galvanized iron shed placed in front of the bin to protect men from the weather and rain. The 6 H.T. Transformers are used for transforming the high tension current to 500 V. for use by the electric shovel and driving the compressor. The one-third power transmission line to the shovel is carried on poles with a short piece of cable from the pole to the electric shovel. This is movable as of necessity as the electrically operated shovel is a caterpillar type and moves around under its own power.

The sand is transported from the "Sand Claims" to the central shaft in detachable buckets carried on an endless cable hung over wheels attached to two sides of four cornered steel towers. The full bucket runs along one side to the central shaft where it is dumped and returns along the other side to the "Sand Claims" to be refilled. The steel towers are approximately 350 feet apart and rest on small concrete foundations to which they are bolted, all of which is movable.

The power transmission line to the plant, including poles, insulators and all overhead equipment, all of which is movable, parallels the conveyor system and runs between the Hollinger Mines and the transformer station at the "Sand Claims" and furnishes the power to operate the conveyor and the necessary power used to mine and load sand in the buckets.

The owners of the mining properties between the "Sand Claims" and the central shaft have never given the respondent permission to install, operate or maintain the conveyor system and power transmission line. The respondent intended to purchase a right-of-way but to date has not done so.

The question as to whether the properties assessed or on which the buildings, plant and machinery are found are "mineral lands" is one of fact, as well as that whether or not any particular substance is a "mineral" within the meaning of the statute in which the word is used, there being no definition in the Act. (*Union Natural Gas Company of Canada* v. *Corporation of the Township of Dover* (1).) We agree with the late Mr. Justice Grant of the Appellate Division, when he says (2):

(1) (1920) 60 Can. S.C.R. 640, at 642.

(2) [1931] O.R. at 645.

1933

TOWNSHIP OF TISDALE v. HOLLINGER CONSOLIDATED GOLD MINES LTD.

Cannon J.

Upon the evidence which was adduced, and upon the findings made by the Ontario Railway and Municipal Board, it appears to me quite clear that the Board must be taken to have decided that the lands in question were mineral lands, within the meaning of section 40, subsection 4; and as their finding in that regard is one of fact, this Court is precluded from interfering therewith.

The respondent's buildings, plant and machinery, although being on mineral lands, must also, to be exempted, unless they form part of the concentrators or sampling plant, be "used mainly for obtaining minerals from the ground or storing the same."

The Appellate Division reached the conclusion that the Legislature intended to relieve from municipal taxation all buildings, plant and machinery, situate upon mineral lands, which form an essential part of the system actively in operation in obtaining the minerals. Counsel for the appellant contends that the section covers only that which was used *directly* in getting out the minerals.

The provisions of subsections 4, 5 and 6 of section 40 indicate that the Legislature, in enacting them, provided a plan of taxation which would be equitable and just as between the owner of agricultural land and the owner of mineral lands. It is not mineral lands which are made non-assessable, but the minerals in, on or under such lands. Both farming lands and mineral lands are assessable at their actual value; but, in the case of mineral lands, their assessed value must not include anything of the value of buildings, etc., used for the purposes mentioned in subsection 4 nor of the value of minerals in, on, or under such land; provided also that they must be assessed at not less than the value of farming land in use in the neighbourhood.

In lieu of the assessment of such buildings, concentrators, minerals, etc., at their actual value, it is provided by subsection 6 that the income from a mine or mineral work shall be assessed by, and the tax leviable thereon shall be paid to, the municipality in which such mine or mineral work is situated. Therefore, under the general scheme of the Act, mineral land, whether worked or unworked, is taxable without reference to the minerals in them; but, when worked, the minerals as such are taxable indirectly on the basis of the income derived from the mine or mineral work, and therefore the exemption clause covers all buildings, plants and other elements of the system used to obtain such income from the mining property.

. . . . .

Having explained our view of the law, we now have to dispose accordingly of the assessments in controversy before us:

I.

(*a*) The Change House, $2,900, is a building erected on the respondent's property to provide accommodation for the men employed in the mine conveniently to dry and change their clothes and for washing, in pursuance of rule 113 of sec. 161 of the *Mining Act,* R.S.O., 1927, ch. 45. This being required by law in order to properly conduct its mining operations, we agree with the Appellate Division that, being used solely by workmen who obtain minerals from the ground, this Change House is not assessable.

(*b*) Boiler House and Heating System, $1,500. This is located near the Change House for the purpose of providing it with heat and water and to provide heat for the Shaft House and the Hoist Room, at the head of the shaft. At the argument, this Court agreed with the Appellate Division that these items also came within the exemption.

II.

Slimes Disposal System, Electric Railway, Powder Magazine, etc.

(*a*) Pump House and machinery, transformers, pipe line and installation, $34,430.

This assessment was disallowed by the District Judge, by the Railway Board and by the Appellate Division, for the reasons above stated; and we see no reason to change their finding.

(*b*) Power Lines and Equipment, $3,387.

(*c*) Electric Railway to Pump House and Powder Magazine, $6,726.

(*d*) Powder Magazine, $5,011.
Heating System, $2,262.
Telephone System to disposal plant, $50, (not in appeal).

The power line carries power to operate the electrically operated shovel; the powder magazine is used to store explosives used to obtain minerals from the ground; the electric heating system is used for keeping the powder maga-

1933

TOWNSHIP OF TISDALE v. HOLLINGER CONSOLIDATED GOLD MINES LTD.

Cannon J.

zine at a constant temperature. The electric railway was erected to furnish transportation from the main shaft of the Hollinger Mine to the McKay Veteran Claim; it parallels the Launder and is used principally to transport explosives from the powder magazine to the mining shafts and supplies to the pump house and other apparatus on the McKay Veteran Claim. These items must be considered as non-assessable as forming part of the plant and machinery used for obtaining minerals from the ground or as part of the concentrator.

III.

Gravel Conveyor System

(*a*) We are not concerned with the assessment of three dwellings ($6,770) and Change House ($455), as no appeal was taken from these assessments.

(*b*) Compressor House, Right of Way, Oil House, Gravel Loading Station, Transformers, Locomotive and Cars, Electric Shovel, Railway Track, Power Transmission Lines and Conveyor Equipment, including steel towers, cables, buckets., etc., $140,389.

As explained above, all the items included in the assessment known as the Conveyor System are necessary to transport sand or gravel to the grounds to fill in the vacant space left in the mine by the rock extracted; and it was clearly proven that the mining operation could not be carried on unless the excavations were filled. R. E. Dye, mining engineer, swears that

> it would be impossible to mine the ore entirely out without filling the openings made by removal of the ore. Otherwise the walls would collapse, and the ore could not * * * be reached without sand or some suitable filling work.

And Mr. J. H. Stovel, General Superintendent of the Dome Mine, also states that the sole purpose of these operations is to enable the respondent

> to extract the ore or mineral-bearing rock from the mine.

This conveyor system is therefore not liable to assessment, as it is on mineral land; and the evidence is conclusive that it is necessary to the extraction of mineral by the respondent.

It is not necessary, in view of our decision on the first point, to deal with the other grounds urged by the respondent.

We therefore reach the conclusion that this appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Gordon H. Gauthier.*

Solicitors for the respondent: *Holden, Murdoch, Walton & Beatty.*

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*PRESENT:—Duff C.J. and Rinfret, Lamont, Cannon and Crocket JJ.