THE CORPORATION OF THE CITY OF TORONTO .... APPELLANT;

1933
* Nov. 22, 23.
1934
* Feb. 6.

AND

ONTARIO JOCKEY CLUB........... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Assessment and taxation—Land used as race course—Potential value as subdivision—Basis of assessment—Assessment of buildings—Business assessment—Assessment Act, R.S.O. 1927, c. 238, ss. 4, 40 (1) (2) (3), 9 (1) (j), (2), (12).

The land in question was owned by respondent, the "Ontario Jockey Club", an incorporated company, and it used the land as a race course, carrying on and managing race meetings thereon. Under the *Assessment Act*, R.S.O. 1927, c. 238, the appellant city assessed the land on the basis of its potential value as a subdivision, and also assessed for the value of the buildings thereon and for business assessment. The assessments were upheld (with variations in amounts) by the Ontario Railway and Municipal Board. The Court of Appeal for Ontario confirmed the assessment of the land alone at the amount fixed by the Board, but struck off the amounts for buildings and for business assessment. The city appealed.

Held: (1) The buildings should be assessed only at their value for the purpose of being wrecked and removed, as, except to that extent, they added nothing to the potential value of the land as a subdivision. It was improper to value the land as for purpose of a subdivision and then value the buildings on the basis of their being used for purposes of a race track. (Secs. 4, 40 (1) (2) (3), of the Act particularly considered).

2. The fact that s. 9 (2) of the Act deals with clubs, and makes liable to a business assessment "every proprietory or other club in which meals are furnished * * *" does not necessarily exclude all clubs from the operation of s. 9 (1) (*j*), making liable for business assessment every person carrying on any of certain specified businesses "or any business not before * * * specially mentioned". The question of whether or not respondent came within s. 9 (1) (*j*) could only be determined by investigating the facts concerning its organization and its operations; and there was evidence on which the Board could properly arrive at its conclusion that respondent was occupying or using the land for the purpose of a business within the meaning of s. 9 (1) (*j*), in view of s. 9 (12) which excludes the application of the *ejusdem generis* rule.

A corporation's liability to business assessment in connection with its lands on which it carries on its affairs does not depend on whether or not a profit is being made.

In the result, the judgment of the Court of Appeal, [1932] O.R. 637, was varied, by increasing the valuation for assessment purposes by a sum for the value of the buildings for wreckage purposes, and by declaring respondent liable for business assessment (based on the valuation of the property as fixed by this Court).

* PRESENT:—Duff C.J. and Rinfret, Smith, Cannon and Hughes JJ.

1934
CITY OF TORONTO
v.
ONTARIO JOCKEY CLUB.

APPEAL from the judgment of the Court of Appeal for Ontario (1) which allowed an appeal by the present respondent from the judgment of the Ontario Railway and Municipal Board. The Board had fixed the assessment of certain land and buildings thereon (owned by the present respondent) at $765,308, being $565,308 on the land and $200,000 on the buildings, and had fixed a business assessment of $191,325. The Court of Appeal reduced the assessment of the land and buildings to $565,308, being $565,308 (as fixed by the Board) on the land and no amount on the buildings, and also struck out the business assessment.

The material facts of the case are sufficiently stated in the judgment now reported.

C. M. Colquhoun K.C. and *J. P. Kent* for the appellant.

D. L. McCarthy K.C. and *F. W. Fisher* for the respondent.

The judgment of the court was delivered by

SMITH J.—This is an appeal concerning the assessment of the respondent's Woodbine Race Course, situated in the city of Toronto.

The Assessor of the appellant, in the year 1931, assessed the respondent, in respect of the 85·88 acres of land owned by the respondent, for $622,630, and the buildings for $202,500, making a total of $825,130. The residence of the Superintendent, with the land on which it was erected, was assessed separately for $4,000, which amount was deducted from the total of $825,130, leaving an assessment of $821,130, to which was added 25 per cent. for business assessment, amounting to $205,282.

The respondent appealed to the Court of Revision, which confirmed the assessment except as to the business assessment, which was reduced to $191,385.

An appeal was taken to His Honour Judge Denton, who confirmed the decision of the Court of Revision.

From this decision the respondents again appealed to the Ontario Municipal Board, which placed the assessment of the lands used for race track purposes at $565,-308, and the buildings at $200,000, making together $765,-308, to which was added 25 per cent. for business assess-

(1) [1932] O.R. 637; [1932] 4 D.L.R. 423.

ment, amounting to $191,325. In addition to these items, there was added an assessment of $4,000 for land and house occupied by the Superintendent, which has not been in dispute.

The respondent further appealed to the Court of Appeal for Ontario, which confirmed the assessment of the land at the amount fixed by the Ontario Municipal Board, namely, $565,308, but struck off the $200,000 on buildings and the $191,325 for business assessment.

From that judgment this appeal is taken.

The Court of Appeal held that, as the assessment on the land fixed by the Ontario Municipal Board was arrived at on the basis of its potential value as a subdivision, which would involve the destruction and removal of the buildings, nothing should be added for the value of these buildings.

Section 4 of the *Assessment Act*, R.S.O. 1927, ch. 238, enacts that all real property in Ontario shall be liable to taxation, subject to certain exceptions that have no application to this case.

Section 40 (1), (2) and (3), reads as follows:

40. (1) Subject to the provisions of this section, land shall be assessed at its actual value.

(2) In assessing land having any buildings thereon, the value of the land and buildings shall be ascertained separately, and shall be set down separately in columns 14 and 15 of the assessment roll and the assessment shall be the sum of such values. The value of the buildings shall be the amount by which the value of the land is thereby increased.

(3) To remove doubts it is hereby declared that the cost of a building is only one of the matters which should be considered in ascertaining the amount for which a building should be assessed, and if it is found that a building, either because of its condition as to repair or of its inappropriateness to the location in which it is found or because of any other circumstances affecting its value, increases the value of the land by less than the cost of the building, or the cost of replacing it, such less sum shall be the amount for which the building shall be assessed under subsection 2; the meaning of that subsection being that buildings shall be assessed for the amount of the difference between the selling value of the whole property and the selling value of the land if there were no buildings on it.

Mr. Justice Riddell, in his reasons, says:

The actual value is to be determined by the evidence, and, not only the present use of the land and the benefits derived therefrom by the owner, but all the potentialities are to be taken into consideration.

He cites a long list of authorities for this proposition, which has been accepted and acted upon by both sides throughout and was not questioned here. On this prin-

1934

CITY OF TORONTO v. ONTARIO JOCKEY CLUB.

Smith J.

ciple the City Assessor, Mr. Harry Nixon, states in his evidence that he assessed the lands of the respondent on the basis of their potential value as a subdivision, and not on the basis of their value as now used by the respondent, as a race course; and neither he nor any other witness gave any evidence as to the value of this land for the purposes of a race course.

The whole evidence of both sides before the Municipal Board was directed to establishing the potential value of the land as a subdivision. It was evidently assumed throughout that the highest actual value that could be given to the land was on the basis of its potential value as a subdivision.

The Assessor, at p. 179, produced his plan of a subdivision, Exhibit 23, and testified that he made his estimate of the value at which he arrived for assessment on the frontage value of the various lots shown on this plan for building purposes, arriving at these values from the assessed values and sale prices of lands surrounding and in the neighbourhood of the lands of the respondent. On the same page he says, speaking of this plan:

> We used that in the land revision work to estimate the present assessment.

At p. 180:

> The information that we used, Mr. Geary, has to do with the property surrounding, north and east, of Woodbine Park.

He goes on to say that he got the valuations by comparing in that way, and arrived at a total lot frontage of 21,072 feet, and in that way arrived at the value of $791,175, the foot frontage value varying according to the situation of the various lots. At pages 189, 198 and 199 he refers to the use of the land for a going concern as one of the elements to be taken into consideration in arriving at the value, and says he knows " of no other way of arriving at a piece of property, that is, in the city limits." Finally, however, he abandons this, as shown in the following abstract from his evidence at p. 205:

> Exhibit 27. Statement of figures on proposed plan of subdividing Woodbine Park.
>
> Q. In this you eliminated all the buildings?
>
> A. Yes, sir.
>
> Q. And you treat it purely as a subdivision?
>
> A. Yes.

Q. Now, I want to ask you: did you arrive at any figures as a going concern?

A. No.

Q. You never adopted that?

A. No, sir.

The learned Chairman of the Municipal Board in his reasons says:

> There was considerable evidence offered, both by the appellants and by the City of Toronto, setting out the way in which the assessment of this property had been originally made, and setting out the value of the property both for race track purposes, and as a subdivision in the City of Toronto in the event of the racing being abandoned and the property sold as a subdivision.

I am unable to find any evidence from any witness as to the actual value of this property for race track purposes, and it is evident that the value fixed by the Board was on the evidence offered as to its potential value as a subdivision, there being no evidence that would justify the finding of value arrived at on any other basis. The Board, therefore, having arrived at its valuation of these lands on the basis of a subdivision, which involved the destruction of all the buildings before the land could be used and disposed of in lots as a subdivision, the buildings added nothing to that potential value of the property beyond their value for the purpose of being wrecked and removed. On this branch of the case I am in entire agreement with the reasons clearly set out by Mr. Justice Riddell, and also with his view that the question involved is one of law.

It is manifestly improper to value the land for the purpose of a subdivision, which would involve the destruction of the buildings, and then value the buildings on the basis of their being used for the purposes of a race track. If the buildings were to be valued on that basis, the land would have to be valued on that basis also.

I find that the Court of Appeal has overlooked the evidence at p. 95 as to the value of the buildings for wrecking purposes, and it was not, I think, referred to on the argument here. The witness, Joseph Teperman, called by the respondent, examined as to the cost of wrecking and removing the buildings and the value of the wreckage, says:

> We would take the entire site and we would still be prepared to pay $5,000.

1934

CITY OF TORONTO v. ONTARIO JOCKEY CLUB.

Smith J.

Q. For all the buildings?

A. For all the buildings, everything that is situated on the ground.

The CHAIRMAN: Q. So you would lose $5,000 on the one stand and you would make up on the other?

A. Make up on the other.

There should therefore be added to the amount fixed by the Court of Appeal this sum of $5,000 as the value of the buildings for wreckage purposes.

The question of whether or not the respondent is liable for business assessment is, perhaps, not so clear. Mr. Colquhoun, on behalf of the appellant, presented a very able argument in support of his contention that the respondent was liable to a business assessment by virtue of sec. 9 of the Act, which reads in part as follows:

> 9. (1) Irrespective of any assessment of land under this Act, every person occupying or using land for the purpose of any business mentioned or described in this section shall be assessed for a sum to be called "Business Assessment" to be computed by reference to the assessed value of the land so occupied or used by him, as follows:
>
> (*j*) Every person carrying on the business of a photographer or of a theatre, concert hall, or skating rink, or other place of amusement, or of a boarding stable, or a livery, or the letting of vehicles or other property for hire, or of a restaurant, eating house, or other house of public entertainment, or of a hotel or any business not before in this section or in clause (*k*) specially mentioned, for a sum equal to twenty-five per centum of the assessed value.
>
> (2) Every proprietory or other club in which meals are furnished, whether to members or other, shall be liable to a business assessment for a sum equal to twenty-five per centum of the assessed value of the land occupied or used for the purposes of the club.

He argues that the respondent carries on a business, and therefore comes within the language of subsection 1 (*j*) quoted above, although not expressly mentioned, because the *ejusdem generis* rule does not apply, by virtue of sec. 9 (12) which reads as follows:

> (12) Wherever in this section general words are used for the purpose of including any business which is not expressly mentioned, such general words shall be construed as including any business not expressly mentioned, whether or not such business is of the same kind as or of a different kind from those expressly mentioned.

It seems clear that the mere fact that an organization styles itself a club will not finally settle the question of whether or not it is liable to assessment under subsection 1 (*j*).

The Ontario Jockey Club is an incorporated company, having a fixed capital represented by stock shares issued to stockholders in the ordinary method. There is in the organization a system by which people who are not stock-

holders may become what is called "members" of the club, endowing them with certain privileges at race meetings, and perhaps on other occasions, not accorded to the public. These members, however, have no voice in the management of the corporation affairs. The race meetings are carried on and managed by the corporation. The moneys received for admission to the races from the pari-mutuel betting system and from other sources are all paid to the corporation, and are applied and paid out as the corporation directs. The earnings or profits derived from these race meetings or any other uses to which the property of the corporation may be put may be applied to payment of dividends to the shareholders if the corporation so determine. The evidence is that for the past two years there have been no profits, so that dividends could not properly be paid except out of accumulated surplus, and none have been paid during these two years. Whether any were paid in preceding years is not disclosed.

It is clear that the question of whether or not a corporation is liable for business assessment in connection with the lands occupied by it, upon which its affairs are carried on, does not depend on whether or not a profit is being made. A corporation, or an individual, for instance, carrying on a mercantile business in a shop, is liable to business assessment, quite regardless of whether the business is realizing a profit or not.

It is no doubt a question of law whether or not sec. 9 (2) quoted above, dealing with clubs, necessarily excludes all clubs from the operation of sec. 9 (1). Having concluded, as stated above, that sec. 9 (2) is not conclusive upon this point, the question of whether or not this particular club comes within the provision of sec. 9 (1) can only be determined by an investigation of the facts concerning its organization and the operations which it carries on. It seems to me that there is evidence upon which the Municipal Board could properly arrive at the conclusion which it reached, that the respondent was occupying or using the land in question for the purpose of a business within the meaning of sec. 9 (1), in view of the provisions of subsection 12, which excludes the application of the *ejusdem generis* rule.

1934
CITY OF TORONTO v. ONTARIO JOCKEY CLUB.
Smith J.

The appeal, therefore, upon this point must be allowed. The valuation of the land for asssessment purposes, fixed by the Court of Appeal, will be increased by the $5,000 referred to, and upon that valuation the respondent is declared liable for business assessment, as provided by the statute.

The appellant was obliged to come to this Court, and is entitled to its costs of this appeal.

Appeal allowed, as above set forth, with costs.

Solicitor for the appellant: *C. M. Colquhoun.*

Solicitors for the respondent: *Ludwig, Shuyler & Fisher.*

---

* PRESENT:—Duff C.J. and Lamont, Smith, Crocket and Hughes JJ.