THE MUNICIPALITY OF METROPOLITAN TORONTO (*Contestant*) APPELLANT; 1962 *Nov. 21, 22

AND

1963 Jan. 22

SAMUEL, SON & CO., LIMITED (*Claimant*) ..... RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

*Expropriation—Industrial building—Value to owner—Market value of land—Reproduction cost of building less depreciation.*

The respondent company was the owner of an industrial building on a site of 1.46 acres in Toronto; the building had been built and later extended for the special purposes of the respondent's business. This property was expropriated by the municipality and the respondent was awarded $1,449,310 by the arbitrator. By a unanimous judgment of the Court of Appeal the award was fixed at $1,303,555. There were concurrent findings of the arbitrator and the Court of Appeal that the market value of the land alone was $423,555. Both parties agreed that the reproduction cost of the building was $640,000. The only difference between the arbitrator and the Court of Appeal was that the arbitrator deducted $46,000 for depreciation against a deduction of $60,000 by the Court of Appeal. There was no dispute about the valuation at $100,000 of certain equipment that could not be removed. The Court of Appeal made no change in an allowance of $200,000 for disturbance, moving expenses and other miscellaneous items. Ten per cent additional allowance for compulsory taking had been awarded by the arbitrator before the decision in *Drew v. The Queen*, [1961] S.C.R. 614, and, of necessity, had to be disallowed by the Court of Appeal.

The municipality claimed that the award should be set aside, and submitted an alternative mode of valuation based upon a comparison between market value and re-establishment cost as ascertained at the date of the arbitration.

*Held:* The appeal should be dismissed.

The submissions of the municipality were rejected. There was no error either of fact or principle in the reasons of the Court of Appeal. In determining value to the owner in this case, it was correct to take into account the market value of the land plus the reproduction cost of the building, less depreciation. *Woods Manufacturing Co. Ltd. v. The*

*PRESENT: Kerwin C.J. and Cartwright, Fauteux, Abbott and Judson JJ.

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MUNICIPALITY OF METROPOLITAN TORONTO v. SAMUEL, SON & CO., LTD.

*King*, [1951] S.C.R. 504; *Irving Oil Co. Ltd. v. The King*, [1946] S.C.R. 551; *Diggon-Hibben Ltd. v. The King*, [1949] S.C.R. 712; *Assaf v. The City of Toronto*, [1953] O.R. 595, referred to.

APPEAL from a judgment of the Court of Appeal for Ontario[1], varying an award of compensation by an arbitrator. Appeal dismissed.

*R. F. Wilson, Q.C.*, and *A. P. G. Joy, Q.C.*, for the contestant, appellant.

*B. W. Grossberg, Q.C.*, and *H. J. Bliss*, for the claimant, respondent.

The judgment of the Court was delivered by

JUDSON J.:—The municipality appeals from a unanimous judgment of the Court of Appeal[1] which awarded the respondent, Samuel, Son & Co., Limited, $1,303,555 for the expropriation of its property. The arbitrator had awarded $1,449,310. The municipality claims here that the award should be set aside.

The respondent was the owner of an industrial building at the southwest corner of Spadina Avenue and Lakeshore Road in Toronto. The frontage on Lakeshore Road was 597 feet, 5¼ inches with a depth of 143 feet on Spadina Avenue. The total area of the site was 1.46 acres. There are concurrent findings of the arbitrator and the Court of Appeal that the market value of the land alone was $423,555. The following table shows the arbitrator's award as varied by the Court of Appeal:

| *Arbitrator's Award* | | | *Court of Appeal* | | |
|---|---|---|---|---|---|
| Market value of land | | $ 423,555 | | | $ 423,555 |
| Buildings—Reproduction cost (agreed) | $ 640,000 | | | $ 640,000 | |
| Depreciation | 46,000 | 594,000 | Depreciation | 60,000 | 580,000 |
| Crane Equipment (agreed) | | 100,000 | | | 100,000 |
| Additional allowance, disturbance, moving, etc. | | 200,000 | | | 200,000 |
| | | $ 1,317,555 | | | |
| 10% additional allowance | | 131,755 | | | nil |
| TOTAL | | $ 1,449,310 | | | $ 1,303,555 |

With the concurrent findings of the arbitrator and the Court of Appeal there can be no question that the valuation of the land is unassailable in this Court. The same applies

[1] [1962] O.R. 463, 32 D.L.R. (2d) 620.

to the reproduction cost of the building. Both parties agreed that it was $640,000. The only difference between the arbitrator and the Court of Appeal was that the arbitrator deducted $46,000 for depreciation against a deduction of $60,000 by the Court of Appeal. There was a wide difference among the experts on the amount of depreciation which should be deducted. In the Court of Appeal the municipality had urged that the depreciation of $60,000 given by one of the experts should be accepted. The Court of Appeal did no more than give effect to that submission.

In my opinion both the arbitrator and the Court of Appeal were right in adopting the principle of reproduction cost less depreciation in determining the value of this building, which was built in 1929 and extended in 1949 for the special purposes of the respondent's business.

There is no dispute about the valuation of the crane equipment at $100,000 which was so constructed that it became part of the building and could not be dismantled, removed and reassembled in a new building.

The next item is one of $200,000 for an additional allowance for disturbance, moving expenses and other miscellaneous items. The Court of Appeal made no change in this allowance. There was ample evidence to support this branch of the award. The moving cost alone was $105,239.07. Loss of profit in the interval before the re-establishment of the business in the new location, loss due to dislocation of business, loss of the advertising value of the old location, which was considerable, and other items of loss on which evidence is given, fully justify the difference between the actual disbursements of moving and the award of $200,000. Counsel for the respondent said that $200,000 was a minimum figure and I am inclined to agree with him.

The last item was the 10 per cent additional allowance. This was awarded before the decision of this Court in *Drew v. The Queen*[1] and, of necessity, had to be disallowed by the Court of Appeal.

After this survey, it is apparent that the only difference between the award of the arbitrator and that of the Court of Appeal was this 10 per cent additional allowance and $14,000 additional depreciation deducted by the Court of Appeal, making a total of $145,755.

[1] [1961] S.C.R. 614, 29 D.L.R. (2d) 114.

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Judson J.

I can see no error either of fact or principle in the reasons of the Court of Appeal. In determining value to the owner in this case, it was correct to take into account the market value of the land plus the reproduction cost of the building, less depreciation. This was done in *Woods Manufacturing Co. Ltd. v. The King*[1]; *Irving Oil Co. Ltd. v. The King*[2]; *Diggon-Hibben Ltd. v. The King*[3]; *Assaf v. The City of Toronto*[4].

The municipality submitted in this Court an alternative mode of valuation based upon a comparison between market value and re-establishment cost which had been ascertained at the date of the arbitration. The argument is built up in this way:

| | |
|---|---|
| Market value, land and buildings | $650.000.00 |
| Crane | 100.000.00 |
| Moving expense etc. | 126,495.18 |
| | $876,495.18 |

The moving expense includes not only the actual disbursements of $105,239.07 mentioned above but also additional items for loss of executive time, cost of advertising and cost of removing a railway siding, which, altogether, produced the sum of $126,495.18. The ascertained re-establishment cost was $903,195.18, made up as follows:

| | |
|---|---|
| Cost of Land (7 acres) | $ 31,500.00 |
| Cost of Building | 745,200.00 |
| Cost of Moving | 126,495.18 |
| | $903,195.18 |

The valuation in the first table is fairly close to the re-establishment cost. The difference between the re-establishment cost and the award of the Court of Appeal is the sum of $400,359.82 which the municipality says must be attributable to savings and anticipated profits which the respondent would have hoped to make by continued use of the expropriated property and that there is no basis for the award of any such sum.

The respondent's answer, which, in my opinion, is correct, is that it would be error to start with this assessment on the basis of market value of land and buildings and that this would be a repetition of the error which was corrected in

[1][1951] S.C.R. 504, 2 D.L.R. 465, 67 C.R.T.C. 87.
[2][1946] S.C.R. 551, 4 D.L.R. 625.
[3][1949] S.C.R. 712, 4 D.L.R. 785.
[4][1953] O.R. 595, 4 D.L.R. 466.

this Court in *Woods Manufacturing*. He also submits that re-establishment cost is irrelevant and affords no guide to the assessment of compensation.

As to market value, the Court of Appeal pointed out that this was a special purpose building built for the purpose of fabricating steel to the special requirements of the respondent's business. The respondent's business had been in operation for 100 years and operating at this site since the year 1929. The expert evidence on which the market value of $650,000 for the land and building is based is no more than this: that to sell the property it would be necessary to find a purchaser who could use it for the same type of business and that if such a purchaser could be found he would advise him to pay at the rate of $10 a square foot for land and building, approximately $650,000 in all. He called this a rule of thumb market value. It can afford no guidance in the assessment of value to the owner on the facts of this case.

There is error, also, in the municipality's submission that re-establishment cost can guide one to an assessment of value to the owner in this case. The re-establishment cost as calculated above was $903,195.18. The error in this submission is that the cost of the land at the new location was only $31,500. The market value of the land at the old location was $423,555. What the company acquired was land worth $31,500 as contrasted with $423,555 at the old site and a more expensive and presumably more modern building but widely separated from the old site of business. I agree with the submission of the respondent that re-establishment cost, on the facts of this case, is of no assistance to the appellant's case.

There is no error in the reasons of the Court of Appeal. I agree with them in their entirety and would dismiss the appeal with costs.

*Appeal dismissed with costs.*

*Solicitor for the contestant, appellant: C. Frank Moore, Toronto.*

*Solicitors for the claimant, respondent: Levinter, Grossberg, Shapiro & Dryden, Toronto.*