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*Nov. 17, 18, 21
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Jan. 24

EDITH ALICE DUTHOIT, as Executrix of the last Will and Testament of W. H. Duthoit, Deceased, and EDITH ALICE DUTHOIT (*Applicants*) .....APPELLANTS;

AND

THE PROVINCE OF MANITOBA (*Respondent*) .....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Expropriation—Compensation—Appraisers' valuations of expropriated lands not accepted by arbitrator—Court of Appeal right in varying arbitrator's award and in accepting appraisal of one of the appraisers as furnishing proper basis on which to fix compensation.

The Province of Manitoba expropriated certain property of the appellants. The property in question comprised three parcels of land. These parcels whilst not contiguous were close together and approximately 2 miles distant from the resort area of Grand Beach on the eastern shore of Lake Winnipeg. Prior to the expropriation there were reports in the press of statements by the Minister of Industry and Commerce in the Provincial Government as to plans by that government to develop the Grand Beach area as an outstanding resort and recreational area. The arbitrator, appointed pursuant to s. 17(1) of *The Expropriation Act*, R.S.M. 1954, c. 78, found that the best use to which all three parcels could be put was subdivision into building lots for summer cottages.

At the hearings before the arbitrator two appraisers were called, one by the appellants and one by the respondent. The respective valuations arrived at were $187,136 and $25,800 and the difference being so great it was agreed, at the urging of the arbitrator, to call a third appraiser.

*PRESENT: Cartwright, Abbott, Martland, Judson and Hall JJ.

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The latter estimated the value of the lands at $27,070. The arbitrator accepted none of these valuations but made an award of $58,242. On appeal, the Court of Appeal reached the conclusion that the appraisal of the third appraiser should be adopted. Accordingly, by a unanimous judgment of that Court the compensation allowed to the appellants was fixed at $27,000 plus interest from the date of taking possession. An appeal from the judgment of the Court of Appeal was brought to this Court.

Held: The appeal should be allowed to the extent of substituting for the sum of $27,000 fixed by the Court of Appeal the sum of $28,953.85.

This was not a case in which the arbitrator enjoyed any particular advantage over the Court of Appeal by reason of having seen and heard the witnesses. The Court of Appeal was right in varying the award and in accepting the appraisal made by the third appraiser as furnishing the proper basis on which to fix the compensation. That appraiser, as pointed out by Guy J.A., had dealt carefully and methodically with the principles governing the fixing of compensation to be paid for expropriated property and applied them to the lands in question. The arbitrator had been led into error by attributing undue importance to the statements of the Minister of Industry and Commerce.

In arriving at his valuation of Parcel No. 3, which was $6,350, the third appraiser assumed that when subdivided it would yield only 39 lots. It was, however, agreed by counsel and stated in a letter to the arbitrator that this number should have been 51 instead of 39. In view of this admission the figure of $8,303.85 should be substituted for that of $6,350 and consequently the total awarded by the Court of Appeal should be increased by $1,953.85.

APPEAL from a judgment of the Court of Appeal for Manitoba[1], allowing an appeal from an arbitration award respecting compensation for expropriated lands. Appeal allowed to limited extent.

A. Kerr Twaddle and *George A. Brown,* for the appellants.

W. E. Norton, Q.C., for the respondent.

The judgment of the Court was delivered by

CARTWRIGHT J.:—This is an appeal from a unanimous judgment of the Court of Appeal for Manitoba[1] pronounced on June 10, 1965, allowing an appeal from an award made by His Honour Judge Molloy on December 22, 1964, and fixing at $27,000 plus interest from the date of taking

[1] (1965), 54 D.L.R. (2d) 259.

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possession the compensation allowed to the appellants for their property expropriated by the respondent. His Honour Judge Molloy had awarded the sum of $58,242. He was sitting as an arbitrator appointed pursuant to s. 17(1) of *The Expropriation Act*, R.S.M. 1954, c. 78. The appeal to the Court of Appeal was brought pursuant to s. 70 of the same Act and s. 31 of *The Arbitration Act*, R.S.M. 1954, c. 9. In this Court the appellants ask that the award of the learned arbitrator be restored.

The relevant facts are set out in detail in the reasons of the Court of Appeal and of the learned arbitrator and a very brief summary will be sufficient to indicate the basis of the decision at which I have arrived.

The land in question comprises three separate parcels referred to in the proceedings as Parcels 1, 2 & 3. These parcels whilst not contiguous are close together and approximately 2 miles distant from the resort area of Grand Beach on the eastern shore of Lake Winnipeg and about 58 miles from central Winnipeg over provincial highways.

Parcel 1 consists of a triangular piece of land containing 17.65 acres with a frontage of about 1,750 feet on Lake Winnipeg.

Parcel 2 consists of a rectangular area of 19.5 acres about 470 feet wide by 1,800 feet long which has no lake frontage, but is only a little over a quarter of a mile from the Grand Beach Lagoon.

Parcel 3 consists of a tract of 27.3 acres of irregular shape having a frontage of some 1,100 feet on the Grand Beach Lagoon.

The learned arbitrator found that the best use to which all three parcels could be put was subdivision into building lots for summer cottages.

Parcel No. 1 had been purchased by Mrs. Duthoit in 1940 for $50 but the value as sworn to by her was $500 at that time.

Parcels 2 and 3 were purchased in 1960 for $1,000 each.

The lands in question were expropriated by the respondent on March 12, 1962. At the hearings before the arbitrator an appraiser, Mr. Rhone, was called by the appellants and an appraiser, Mr. Farstad, by the respondent. The difference between their estimates of value was so great that the arbitrator urged the calling of a third appraiser and a Mr. Turpie, a man of many years experience agreed upon by the parties, was persuaded to examine the property and give his appraisal. The valuations arrived at by these three witnesses were as follows:

	Appellants' Appraiser Mr. Rhone	Respondent's Appraiser Mr. Farstad	Third Appraiser Mr. Turpie
Parcel No. 1	$100,000.00	$15,700.00	$14,120.00
Parcel No. 2	50,773.00	5,900.00	6,600.00
Parcel No. 3	36,363.00	4,200.00	6,350.00
	$187,136.00	$25,800.00	$27,070.00

The arbitrator accepted none of these figures but, as already stated, made an award of $58,242. Prior to the expropriation there were reports in the press on March 15, 1960, and August 22, 1960, of statements made by the Minister of Industry and Commerce in the Provincial Government as to a plan by that government to develop the Grand Beach area as an outstanding resort and recreational area.

Neither Mr. Duthoit nor any of the appraisers were of opinion that these statements would add significantly to the value of the expropriated lands but, as is shown in the reasons of Guy J.A. who gave the judgment of the Court of Appeal, the learned arbitrator attached great weight to them.

After having "carefully reviewed all the evidence and the exhibits filed and the reasons advanced by the learned Arbitrator for his award" and having "given anxious consideration to the arguments of both counsel", the Court of Appeal reached the conclusion that the appraisal of Mr. Turpie should be adopted.

Guy J.A. after stating concisely and accurately the rules to be observed in fixing the compensation to be paid for

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expropriated property, pointed out that Mr. Turpie had dealt carefully and methodically with these governing principles and applied them to the lands in question. He was of opinion that the learned arbitrator had been led into error in reaching a figure more than twice that arrived at by Mr. Turpie by attributing undue importance to the statements of the Minister of Industry and Commerce. In all of this I agree with Guy J.A. This is not a case in which the learned arbitrator enjoyed any particular advantage over the Court of Appeal by reason of having seen and heard the witnesses. At the commencement of his reasons, he says:

> Three appraisals of the subject land were submitted to me. The Applicants called Mr. M. R. Rhone and the Crown called Mr. E. K. Farstad. A third appraisal was made by Mr. Andrew Turpie, upon my suggestion, in view of the wide divergence in the opinions of the other appraisers. I find no reason to prefer any of these gentlemen over the others by reason of qualifications, experience or conduct as witnesses.

The task of the appellants in this Court is to satisfy us that the judgment of the Court of Appeal is wrong; but, for the reasons given by Guy J.A., I am of opinion that this is a case in which the Court of Appeal was right in varying the award and in accepting the appraisal made by Mr. Turpie as furnishing the proper basis on which to fix the compensation.

One point remains. In arriving at his valuation of Parcel No. 3, which was $6,350, Mr. Turpie assumed that when subdivided it would yield only 39 lots. It was, however, agreed by counsel and stated in a letter to the learned arbitrator that this number should have been 51 instead of 39. In view of this admission it appears to me that the figure of $8,303.85 should be substituted for that of $6,350 and consequently the total awarded by the Court of Appeal should be increased by $1,953.85.

While on this comparatively minor point the appellants succeed, the main attack on the judgment of the Court of Appeal has failed and under all the circumstances I think there should be no order as to costs in this Court.

In the result I would allow the appeal to the extent of substituting for the sum of $27,000 fixed by the Court of

Appeal the sum of $28,953.85. In all other respects I would affirm the judgment of the Court of Appeal. I would make no order as to costs in this Court.

Appeal allowed to limited extent; no order as to costs.

Solicitor for the appellants: George A. Brown, Winnipeg.

Solicitors for the respondent: Fillmore, Riley & Company, Winnipeg.