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LE PROCUREUR GÉNÉRAL DE
LA PROVINCE DE QUÉBEC
et L'HONORABLE BERNARD
PINARD

APPELLANTS;

AND

CYPRIEN HÉBERT

RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH,
APPEAL SIDE, PROVINCE OF QUEBEC

Expropriation—Indemnity fixed by Public Service Board—Increase granted by Court of Appeal—Value of servitudes—Code of Civil Procedure, arts. 1066a et seq.

By a notice of expropriation given in August 1961, the appellants expropriated a property belonging to the respondent, situated in the city of Dummondville, P.Q., and forming part of a property purchased by the respondent in 1945 for the price of \$2,200. The deed of sale to the respondent contained restrictive conditions and created certain servitudes. The right to expropriate was not contested. The Public Service Board valued the land at 55¢ per square foot and fixed the indemnity at \$5,065.50. That decision was homologated by the Superior Court. The Court of Appeal fixed the commercial value of the land taken at \$1.25 per square foot and awarded an indemnity of \$20,512.50. The expropriators appealed to this Court.

Held: The appeal should be allowed.

The finding of the Court of Appeal that the commercial value of the land taken was \$1.25 per square foot should not be disturbed. However, the 20-foot strip along St. Joseph Boulevard which the respondent was obligated, under this deed of acquisition, to cede free of charge to the city, if required to do so, had no commercial value to the respondent and therefore, contrary to what the Court of Appeal decided, the respondent was not entitled to compensation for that portion of the land taken. As to the servitude of non-access, the Court of Appeal erred in awarding compensation. That servitude caused no appreciable inconvenience to the owner of the property and the respondent, therefore, was not entitled to compensation under this head. In the result, the respondent was entitled to a compensation of \$11,512.50.

Expropriation—Indemnité fixée par la Régie des services publics—Augmentation accordée par la Cour d'Appel—Valeur de certaines servitudes—Code de Procédure Civile, arts. 1066a et seq.

Par un avis d'expropriation daté du mois d'août 1961, les appelants ont exproprié un immeuble appartenant à l'intimé, situé dans la cité de Drummondville, P.Q., et formant partie d'un terrain acheté par l'intimé en 1945 au prix de \$2,200. L'acte de vente en faveur de l'intimé contenait des conditions restrictives et créait certaines servi-

*PRESENT: Taschereau C.J. and Cartwright, Fauteux, Abbott and Martland JJ.

tudes. Le droit d'exproprier n'a pas été contesté. La Régie des services publics a évalué la terre à 55c le pied carré et a fixé l'indemnité à \$5,065.50. Cette décision de la Régie fut homologuée par la Cour supérieure. La Cour d'Appel a établi la valeur commerciale de la terre expropriée à \$1.25 le pied carré et a accordé une indemnité de \$20,512.50. Les expropriants en appelèrent devant cette Cour.

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Arrêt: L'appel doit être maintenu.

La conclusion de la Cour d'Appel à l'effet que la valeur commerciale de la terre expropriée était de \$1.25 le pied carré ne doit pas être changée. Cependant, la lisière de 20 pieds le long du boulevard St-Joseph que l'intimé était obligé, en vertu de son acte d'achat, de céder gratuitement à la cité, s'il en était requis de le faire, n'avait aucune valeur commerciale pour l'intimé et en conséquence, contrairement à ce que la Cour d'Appel en a décidé, l'intimé n'avait pas droit à une compensation pour cette partie de la terre expropriée. Quant à la servitude de non accès, la Cour d'Appel a erré en accordant une indemnité. Cette servitude ne causait pas d'inconvénients appréciables au propriétaire du terrain et l'intimé n'avait donc pas droit à une indemnité pour cet item. Comme résultat, l'intimé a droit à une indemnité de \$11,512.50.

APPEL d'un jugement de la Cour du banc de la reine, province de Québec¹, variant l'indemnité accordée à un exproprié. Appel maintenu.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, province of Quebec¹, varying the compensation awarded for the expropriation of a property. Appeal allowed.

Laurent E. Bélanger, Q.C., and Marcel Nichols, for the appellants.

Gaston Ringuet, Q.C., and Jules Saint-Pierre, Q.C., for the respondent.

The judgment of the Court was delivered by

ABBOTT J.:—This is an appeal from a unanimous judgment of the Court of Queen's Bench of the Province of Quebec¹ rendered on September 23, 1965, allowing an appeal from a judgment of the Superior Court rendered on August 2, 1963, which homologated a decision of the Public Service Board of the Province of Quebec fixing the compensation to be paid to respondent for property expropriated by the appellants.

¹ [1956] Que. Q.B. 1029.

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The right to expropriate was not contested, and following proceedings under arts. 1066a et seq. of the *Code of Civil Procedure*, the Public Service Board, as arbitrator, fixed at \$5,065.50 the compensation allowed to respondent for the property expropriated by appellants.

On appeal to the Court of Queen's Bench that amount was increased to \$20,512.50. In this Court the appellants ask that the award of the Public Service Board be restored.

The relevant facts are set out in detail in the reasons of Rinfret J., in the court below, and in the Order of the Public Service Board. They are not now seriously in issue and for the purposes of the present appeal can be shortly stated.

The property in question is situated at the corner of St. Pierre St. and St. Joseph Boulevard West in the City of Drummondville. It forms part of an emplacement purchased by respondent on September 11, 1945, from Southern Canada Power Company Ltd. for the price of \$2,200. The deed of sale from the power company contained restrictive conditions and created certain servitudes in the following terms:

RESERVATIONS AND SERVITUDES

The Vendor reserved as perpetual servitudes on the property above sold and described in favour and for the benefit of the Vendor on the residue of said lot No. 151, and in favour of part of lot 152, of the South-Ward and of lots Nos. 3 and 4 of the West-Ward of Drummondville being properties of the Vendor, the following rights and restrictions, all undertaken and agreed to by the Purchaser.

1. To run or place overhead or underground electric transmission and telephone line or lines which may already be constructed or which may be constructed in future on or across said sold property, including the right to place or construct thereon poles and anchors towers supports, structures guy wires, etc.

2. To run a duct line or lines and pipes over and under said property.

3. No structure of any sort shall be erected and no tree or trees shall be planted in near or within falling distance of the said transmission lines. The Vendor shall have the right to trim and cut any trees thereon and to do other such acts as may be necessary for the full operation of said transmission and telephone lines and duct or pipe lines and their maintenance in good order, including the right of ingress and egress for employees and employees' vehicles at all time on said property sold for the construction, operation and maintenance of said lines, the whole without any compensation therefor.

4. No structure shall be erected and no trees shall be planted on or along a strip of the hereby sold property, twenty-five feet wide adjacent to the present north-east limit of the third range (St. Joseph Boulevard) and parallel to it.

5. Should the City of Drummondville require land along the said third range road, to increase the width of said road by a maximum of twenty feet, the Purchaser agrees to cede to the said City of Drummondville, free of charge, a strip of land along the hereby sold property, wide enough for such purpose.

Notice of expropriation was given on August 10, 1961, and a technical description of the property, prepared on behalf of appellants, is dated October 5, 1961. The property and rights expropriated are concisely described by Rinfret J., as follows:

La description technique du 5 octobre 1961—

(1) décrit le terrain à acquérir comme contenant une superficie de 14,810 pieds carrés, soit 97 pieds dans la ligne nord, le long du chemin St-Georges (rue St-Pierre), dans la ligne est 41.5 pieds, dans la ligne nord-est 26 plus 202 pieds; dans la ligne sud-est 52 pieds et dans sa ligne sud, 294 pieds.

En somme l'expropriation couvrirait une lisière de 52 pieds sur toute la largeur du lot, longeant le boulevard St-Joseph.

(2) elle prévoit une servitude de non-accès s'étendant sur une distance de 26 pieds sur la rue St-Pierre ainsi que sur le boulevard St-Joseph et sur une distance de 41.5 pieds dans la ligne courbe contournant l'encoignure;

(3) elle établit une servitude d'une largeur de 10 pieds pour le passage d'une ligne de transmission de la Southern Canada Power, le long du boulevard;

(4) elle décrétait l'établissement et le maintien d'une zone libre de construction sur une distance additionnelle de 8 pieds, soit en tout de 18 pieds, parallèle au boulevard.

Comme résultat net de cette description technique, l'appelant perdait une lisière de terrain de 52 pieds et se voyait privé de construire sur une lisière additionnelle de 18 pieds une tranche de 70 pieds sur la profondeur de 114 pieds que contenait son immeuble.

As above stated, the superficial area of the land expropriated was 14,810 square feet of which 5,600 square feet represented the area comprised in the 20-foot strip, which, under his deed of acquisition, respondent was obligated to convey to the City of Drummondville for the widening of St. Joseph Boulevard.

The Public Service Board held that by reason of the stipulations contained in his deed of acquisition, which I have just referred to, the respondent was not entitled to compensation for the taking of a 20-foot strip along St. Joseph Boulevard. It valued the land expropriated at 0.55

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cts. per square foot and applying that figure to the remainder of the area expropriated, namely 9,210 square feet, it fixed the indemnity payable at \$5,065.50.

Having held that by reason of the servitudes and restrictions imposed on the property by the power company in 1945, the land taken had very little commercial value the Board added that in fixing the value at 0.55 cts. per square foot, "ce prix tient également compte de la possibilité pour l'exproprié d'obtenir de la Southern Canada Power la libération éventuelle des servitudes qui l'affectaient". The Board also found that the respondent was not entitled to any compensation for the servitude of non-access or for injurious affection to the remainder of his property.

The Court of Queen's Bench held that the Board had erred in considering that the limitation of its servitude by the power company was a mere possibility. After discussing the evidence on this point, Rinfret J. said:

De ces témoignages il faut, je crois, dégager que la disparition des servitudes de la Southern Canada Power, sur le terrain de M. Hébert, était plus qu'une possibilité; plus qu'une probabilité, c'était une certitude sujette à une condition suspensive: la fixation par le gouvernement de la location exacte du boulevard St-Joseph.

On avait assuré M. Hébert que main-levée serait donnée sur le résidu de son terrain aussitôt que le gouvernement indiquerait l'emplacement du boulevard.

I am in respectful agreement with that finding. In fact by a letter dated March 29, 1962, addressed to respondent, the power company did agree to limit its servitude to a strip along the new line of St. Joseph Boulevard and this was confirmed by a notarial deed executed May 24, 1962. Both these documents were filed with the Board before it made its award.

Having carefully reviewed the evidence, Rinfret J. (with whom Taschereau, Owen and Rivard JJ. concurred) fixed the commercial value of the land taken at \$1.25 per square foot, and that finding should not be disturbed. He also held that the respondent was entitled to compensation for all the land taken—including the 20-foot strip above referred to—and fixed the indemnity at \$18,512.50, together with a sum of \$2,000 as indemnity for the servitude of non-access making a total of \$20,512.50. In all other respects the

findings of the Board were confirmed. Montgomery J., while of opinion that the Board may have been right in taking into account the undertaking to transfer the 20-foot strip to the City free of charge, considered that the value of remainder of the property expropriated justified the proposed award of \$20,512.50.

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As I have said, under his deed of acquisition from the power company, respondent was obligated if required to do so, to cede a 20-foot strip free of charge to the City of Drummondville for the widening of St. Joseph Boulevard. Moreover, under clause 4 of the said deed, no structure could be erected or trees planted on the said strip. It is true that expropriation proceedings were initiated by the Provincial Government and the cost of the expropriation borne by it. The expropriation however, was for the joint benefit of the Province and the City, and under the provisions of the *Roads Act*, now 1964 R.S.Q., c. 133, s. 98, the land when taken vested in the City and became part of St. Joseph Boulevard West. With great respect, in my opinion the Board was justified in finding as it did that the land comprised in the said strip had no commercial value to respondent and that he was not entitled to compensation for that portion of the land taken. It follows therefore that the amount of \$18,512.50 established by the court below should be reduced to \$11,512.50.

In awarding an amount of \$2,000 as compensation for the servitude of non-access, the Court below seems to have proceeded on the assumption that this servitude covered all the remaining frontage on St. Pierre St. of the property purchased by respondent from the power company. In fact this is not the case. As counsel for appellants pointed out in the argument before us, from a plan produced by respondent, dated October 2, 1961, and bearing the number 85 3-D, it appears that the property had a frontage on St. Pierre St. of approximately 148 feet. Of that frontage 97 feet were expropriated and a servitude of non-access imposed with respect to an additional 26 feet making a total of 123 feet. This left a frontage of approximately 25 feet on St. Pierre St., over which access to the property was unrestricted. So far as St. Joseph Boulevard is concerned, after the expropriation, access remained unrestricted along a frontage of 202 feet.

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With respect to this servitude of non-access, the Public Service Board said:

CONSIDÉRANT QUE les régisseurs ont visité le terrain en question à plusieurs reprises, aussi bien avant qu'après l'enquête;

CONSIDÉRANT QUE le résidu de la partie expropriée du lot 151 a une superficie de 10,800 pieds carrés, soit une superficie suffisante pour y ériger une station de service, selon les normes usuelles et suivant les prétentions des experts de l'exproprié, pourvu que la forme de cette superficie s'y prête;

CONSIDÉRANT QUE la servitude de non-accès placée au coin du boulevard St-Joseph et du chemin St-Georges, sur une longueur globale de 138½ pieds également répartie entre les deux rues, n'a pas pour effet de rendre l'exploitation du résidu impossible, car même si la servitude n'existait pas, la disposition des rues d'où provient la clientèle l'empêcherait de faire usage du secteur clôturé, du moins dans une très large mesure;

CONSIDÉRANT QUE les clients éventuels peuvent entrer sur le terrain et en sortir sans inconvénients appréciables.

It held that the respondent was not entitled to compensation for the creation of such servitude.

As pointed out in the Court below, the servitude of non-access extends over 93.5 feet not 138.5 feet as stated by the Board, but obviously this error does not affect its findings that such servitude caused no appreciable inconvenience to the owner of the property and that consequently he was not entitled to compensation under this head. I am in agreement with these findings.

In the result, therefore, I would allow the appeal, modify the judgment in the court below and substitute the sum of \$11,512.50 for the sum of \$20,512.50 therein mentioned. The appellants are entitled to their costs in this Court.

Appeal allowed with costs.

Attorneys for the appellants: Nichols & Pinard, Drummondville.

Attorneys for the respondent: Ringuet & Saint-Pierre, Drummondville.