CV 04447

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CANADA TUNGSTEN MINING CORPORATION LIMITED

Appellant

- and -

DEPARTMENT OF MUNICIPAL AND COMMUNITY AFFAIRS and the ASSESSMENT APPEAL TRIBUNAL

Respondents

Appeal against a decision of the Assessment Appeal Tribunal under the **Property Assessment and Taxation Act** allowed in part.

Heard at Yellowknife on May 25th 1993

Judgment filed: June 4th 1993

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Appellant: Peter D. Feldberg, Esq.

No one *contra*.

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REASONS FOR JUDGMENT

1 This unopposed appeal comes before the Court pursuant to s.69 of the **Property Assessment and Taxation Act**, R.S.N.W.T. 1988, c. P-10.

2 By s.69(2) of the Act, the appeal is restricted to grounds of legal error on the face of the record of the Assessment Appeal Tribunal.

3 It is only necessary, for purposes of this appeal, to say that the Tribunal erred in law by misinterpreting (and consequently misapplying) the Act, as appears on the face of the record. The error consists in the Tribunal's incorrect classification of the improvements on one or more parcels of land as falling necessarily within the same class as the land on which the improvements lie.

4 The appeal is therefore allowed. The matter is referred back to the Tribunal pursuant to s.70(3) of the Act. And the Tribunal's decision dated December 9th 1992 is vacated with respect to the improvements. The remainder of the Tribunal's decision is confirmed.

5 What follows is by way of explanation of my conclusion that the Tribunal was in error as mentioned above.

6 It is perhaps helpful to begin with an authoritative statement of the general approach to be taken when interpreting statutes under the Common Law. In his work **The Construction of Statutes**, Dr. E.A. Driedger, Q.C., a former Legislative Counsel and acknowledged expert in that field, has this to say at page 67:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.

7 The **Interpretation Act**, R.S.N.W.T. 1988, c. I-8 also provides this rule to be followed:

> 10. Every enactment shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

8 By way of illustration, these principles enable the Court to imply an additional basis for its decision in a case such as this, one not expressly mentioned in s.70(1) of the **Property Assessment and Taxation Act**, which reads as follows:

70. (1) The Supreme Court shall make its decision on the basis of

(a) the evidence received by the Tribunal;
(b) the facts recorded in the decision of the Tribunal; and
(c) the reasons for and the decision of the Tribunal.

9 No mention is there made of the law itself as a basis on which the Court is to reach its decision. But when one reads s.70(1) in its immediate context, together with s.69(2), this is very clearly and necessarily implied; s.69(2) stating, as it does:

> 69. (2) An appeal under subsection (1) may only be made on the grounds that the Tribunal has made an error of law on the face of the record of proceedings conducted by the Tribunal.

10 The intention of the legislature is plainly that the Court shall rest its decision not only on the matters referred to in s.70(1) but also on the remainder of the Act, interpreted according to law - and that of course includes s.10 of the **Interpretation Act**, among other requirements of law, and the interpretative principle or approach to the construction (or interpretation) of statutes under the Common Law, as stated by Dr. Driedger.

11 This conclusion is furthermore compelled by the following provisions of the **Judicature Act**, R.S.N.W.T. 1988, c. J-1:

> 22. In every civil cause or matter that is considered by any court, law and equity shall be administered by the court according to the rules contained in sections 23 to 32.
>
> 27. A court in the exercise of its jurisdiction in every cause or matter pending before it has power to grant and shall grant either absolutely or on reasonable terms and conditions that it considers just, all remedies that any of the parties may appear to be entitled

> to in respect of any and every legal or equitable claim properly brought forward by them respectively in the cause or matter, so that as far as possible all matters so in controversy between the parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning those matters avoided.

12 It must also be remembered that all Acts of the Northwest Territories are dependent, for their legal authority and effect, on the provisions of the **Northwest Territories Act**, R.S.C. 1985, c. N-27, of which s.16 declares that such Acts are always subject to the provisions of all Acts of the Parliament of Canada. The **Property Assessment and Taxation Act** is therefore subject to, among other federal Acts, the **Canadian Bill of Rights** and its declaration that in Canada (including, of course, the Northwest Territories)

> ... there have existed and shall continue to exist ... the following human rights and fundamental freedoms, namely,
>
> (a) the right of the individual to ... enjoyment of property, and the right not to be deprived thereof except by due process of law;
>
> (b) the right of the individual to equality before the law and the protection of the law ...

13 Section 2 of the **Canadian Bill of Rights** requires every "law of Canada" to be "construed" (interpreted) "and applied" so as not to adversely affect these rights. And the words "law of Canada" include legislation of the Northwest Territories such as the **Property Assessment and Taxation Act**. This follows from s.5(2) of the **Canadian Bill of Rights** as interpreted and applied by the Supreme Court of Canada in the case of **R. v. Drybones**, [1970] S.C.R. 282, 10 C.R.N.S. 334, 71 W.W.R. 161, (1970) 3 C.C.C. 355, 9 D.L.R. (3d) 473.

14 Whereas the **Property and Assessment Tax Act** is very comprehensive in its scope and may, for its intended purposes, therefore be regarded as a code of law governing the assessment of property for purposes of taxation in the Northwest Territories, it is nevertheless to be read always subject to other applicable legislation, such as the federal and territorial statutes above mentioned, and in a manner consistent with the underlying principles of statutory interpretation established by the Common Law. That this is the approach to take is supported by Pierre A. Coté in his work **The Interpretation of Legislation in Canada** at pages 27 to 29, where he adds that particular weight is of course to be given to the text of the code as formulated by the legislature.

15 The meaning of "assessment" in Canadian law is discussed in the classic reference text **Assessment and Rating, Municipal Taxation in Canada** by H.E. Manning, Q.C. The following appears at page 68:

> Assessment in the ordinary use of the word, however, is a quasi-judicial act by persons, appointed for the purpose under statutory powers, generally called "assessors", constituting the first step in the imposition of taxes, by which persons, property or businesses, are formally entered on a list called an assessment roll, with a view to the subsequent ascertaining, by reference to the assessment roll, of the persons, property or business occupancy, liable to taxation and the amount of tax to be imposed and levied.

16 In speaking of assessment as a quasi-judicial act, the learned author underlines the importance to be given to correct interpretation of legislation such as the **Property Assessment and Taxation Act**, in accordance with the principles and governing statutes already mentioned.

17 The word "assessment" is not specifically defined by the **Property Assessment and Taxation Act** or, so far as the Court is aware, by any other statute *in pari materia*. A review of the contents of the Act indicates that the meaning to be given to the word is generally as indicated by **Assessment and Rating; Municipal Taxation in Canada** as above quoted. And reference may also be made to **Property Assessment in Canada** by Frederic H. Finnis, at page 1, where this appears:

> Assessment is the process whereby the local tax base in the form of real and occasionally personal property is valued for the purposes of municipal and school taxation, and sometimes for provincial taxation as in Prince Edward Island, New Brunswick and British Columbia. It is the official act of discovering, listing and valuing property by appointed assessors or appraisers. The result of an assessment determines which properties will provide the base for local tax levies and the share of taxation that each property will bear. Accordingly the purpose of assessment must be to provide an equitable means of valuing property so that the property tax may be levied and distributed as evenly as possible. To achieve equity the market value of all property should be determined by the application of uniform principles and up-to-date, accurate methods which will provide an equitable relationship among and within all groups of property whether residential, industrial, commercial or farm.

18 With the foregoing as a basis, I come now to the provisions of the **Property Assessment and Taxation Act** which require interpretation with respect to the subject matter of this appeal. In doing so, I shall focus on the classification for taxation of improvements only, not that of the land, since counsel for the appellant took the position at the hearing of this appeal that the only issue to be decided is in respect of the improvements.

19 Section 2 of the Act specifically defines the term "improvement" as follows:

> 2. (1) Subject to this section, an "improvement" is

(a) everything that, without special reference, would be conveyed if real property were sold,

(b) everything fixed to land, even slightly, unless there is evidence showing that it was intended that the thing was to remain separate from the land,

(c) any machinery, equipment, appliance or other thing forming an integral part of any activity on or use of land, other than a residential use or activity, whether or not that thing is mobile, or

(d) anything forming an integral part of the things referred to in paragraphs (a) to (c), unless there is evidence showing that it was intended that the thing was to remain separate from the improvement,

whether or not it is in, on, over or under land.

(2) An improvement does not include

(a) land, mobile units, pipelines, works and transmission lines and railways;

(b) personal property, including vehicles or any machinery, equipment, appliance or thing that is portable, except as provided under paragraph (1)(c) or (d); or

(c) any other thing that is declared in the regulations not to be an improvement for the purposes of this Act and the regulations.

(3) The evidence referred to in paragraphs (1)(b) and (d) is anything

(a) that shows the extent or amount to which the thing is affixed; and

(b) that can be clearly seen by physical inspection or by reference to design plans or other documents.

(4) The intention of the person affixing anything to land or an improvement is relevant only insofar as it can be presumed from the extent or amount of the affixing and object of the affixing.

21 Section 7 of the Act governs the assessment of improvements separately from the assessment of land, which is governed by section 6. These sections read:

> 6. An assessor shall assess every parcel that is liable to assessment in accordance with the regulations separately from improvements, mobile units, pipelines, works and transmission lines, and railways.
>
> 7. An assessor shall assess all improvements that are liable to assessment in accordance with the regulations separately from the land on which they are located.

22 This separate treatment of assessments in relation to land, on one hand, and improvements on the other hand, is carried forward by section 11:

> 11. Where the regulations do not provide for the manner in which, an assessed value is to be given to
>
> (a) a parcel, the assessor shall assess the parcel in a manner that to the assessor appears fair, having regard to any similar parcels in the same vicinity;
>
> (b) an improvement, the assessor shall assess the improvement in a manner that to the assessor appears fair, having regard to any similar improvements in the same vicinity; and
>
> (c) a mobile unit, the assessor shall assess the mobile unit in a manner that to the assessor appears fair, having regard to any similar mobile units in the same vicinity.

23 Section 13 of the Act establishes, for the general taxation area, eleven different classes of "property", including "class 4 - comprised of property principally used for the extraction of minerals, including mining and quarrying, but not the extraction of hydrocarbons". The land on which the improvements in question are situated is classed in this category.

24 The land and improvements in question are all located in the general taxation area and are outside any municipal taxation area. Although the term "property" is not defined by the Act, it is apparent that it includes both land and improvements, so that section 13 applies to both. Other forms of property, in addition, are also referred to in section 5 of the Act; but these need not be listed here.

25 The Act defines the following expressions which include the word "property" in a manner fully consistent with the meaning of "property" above mentioned. These expressions are there defined as follows:

> 1. In this Act,
>
> "assessable property" means any land, improvement, mobile unit, pipeline, works and transmission lines or railway that is liable to assessment;
>
> "assessed property" means assessable property that has been assessed;
>
> "property class" means
>
> (a) in the general taxation area, a class of property established by section 13 or pursuant to section 14, and
> (b) in a municipal taxation area, a class of property established by by-law under subsection 15(1) or the class deemed to apply under subsection 15(2);
>
> "property tax" means a tax payable under Part III and any interest payable on that tax;
>
> "taxable property" means assessed property that is liable to taxation under this Act; ...

26 The natural meaning (and, in my respectful view the correct meaning) to be

given to the expression "assessed property" in section 16 of the Act is, as proposed by counsel for the appellant (and as provided by sections 6 and 7), each individual parcel of land and each individual improvement, individually assessed.

27 Section 16 reads:

> 16. (1) After an assessment, the assessor shall assign to the assessed property the property class that most appropriately describes the assessed property.
>
> (2) Subject to the regulations, where two or more uses are being made or are proposed to be made of assessed property, the assessor shall assign a property class to the assessed property based on the predominant use being made or proposed to be made of the assessed property.

28 In other words, section 16 does not contemplate an assessment of land and improvements together, since that is contrary to the express requirements of sections 6 and 7 of the Act. This is where the Tribunal made its error, by ruling that the property class of the land is also to be attributed to the improvements. On the contrary, assessed property consisting of land is to be classified under section 16 according to the property class which most appropriately describes the land; and assessed property consisting of an improvement is to be classified under that section according to the property class which most appropriately describes the improvement.

29 It is immaterial that an improvement is of a different property class from that of the land on which it is situated. Paragraph 18(1)(f)(i) does not require or authorise any uniform or packaged classification of both the land and its improvements taken together.

It merely governs what the assessment roll is to show.

30 It is error in law to hold, as the Tribunal did, that paragraph 18(1)(d) of the Act allows no more than one property class to be assigned to "the assessed property", giving that expression a meaning contrary to the requirements of section 6 and 7, as mentioned above, by including land and improvements together as a unit or item of "assessed property" when, correctly understood, each parcel of land and each improvement is to be a distinct and separate unit or item of "assessed property". Like paragraph 18(1)(f)(i), paragraph 18(1)(d) merely governs what is to be shown in the assessment roll. It does not in any way modify the requirements of sections 6 and 7, or the meaning to be given to "assessed property" in the Act.

31 Were it otherwise, so that all improvements were required to be classified alike along with the land on which they are situated, the assessor would be unable to assess them individually according to the classification appropriate to each where, as in the case of the appellant mining company, the land consists of one or a few very large parcels under lease from the Crown rather than a multitude of small Crown granted parcels in a municipality. The intention of the legislature to achieve the greatest possible measure of tax equity among property owners in the Northwest Territories would be defeated. That intention respects the requirements of the **Canadian Bill of Rights**. A contrary interpretation, such as that reached by the Tribunal, does not.

32 The appellant has cited a number of authorities in support of its position.

While none of these is binding on this Court, I agree that they are indicative of the correct interpretation to be given to the **Property Assessment and Taxation Act**, on the basis of general principles, even though they were decided on the basis of different legislation in other jurisdictions. See **Re Singh and City of Sudbury** (1975), 8 O.R. (2d) 377 (Ont. Div.Ct.); **Re Homestead Land Holdings Ltd. and Regional Assessment Commissioner, Region No. 5** (1986), 30 D.L.R. (4th) 641 (Ont. H.Ct.); and **Hadden and Sand v. R.**, [1983] 3 W.W.R. 661 (Sask. Q.B.).

33 To conclude, I have not considered the classification or assessment of the land since I understand that the issues in that connection, as discussed in the written material filed, do not require now to be dealt with in this appeal.

M.M. de Weerdt
J.S.C.

Yellowknife, Northwest Territories
June 4th 1993

Counsel for the Appellant: Peter D. Feldberg, Esq.

No one *contra*.

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