SC 223/80

Prince George Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PINERIDGE PROPERTY LTD.

PETITIONER

AND:

BOARD OF SCHOOL TRUSTEES OF SCHOOL DISTRICT #57

RESPONDENT

REASONS FOR JUDGMENT

OF

HIS HONOUR JUDGE LOW

Counsel for the Petitioner: David E.M. Jenkins, Esq. and Dick Byl, Esq.

Counsel for the Respondent: Paul M. Pakenham, Esq.

Dates of Trial: December 21, 1981 and March 17, 1982.

The petitioner seeks declarations as follows:

1. That it is entitled to repurchase a certain piece of real property expropriated by the respondent in 1966.

2. That it holds a vendor's lien on the property.

3. That it is entitled to have the property vested in it absolutely.

4. That certain resolutions passed by the respondent in 1966 and the expropriation itself are ultra vires, void, and of no effect.

The present legal description of the property in question is: Lot 6, District Lot 343, Cariboo District, Plan 18815. That description includes additional property.

The proceedings were converted to an action by interlocutory order. By agreement between counsel evidence at trial was given by affidavits and by reading in portions of examinations for discovery. There was no viva voce evidence. In due course written argument was submitted by both sides.

The parties, through their respective counsel, agreed in writing pursuant to section 23(1) of the County Court Act to this action being tried in the County Court of Cariboo.

The property was expropriated by the respondent school board from the petitioner in 1966 for the sum of $104,658 which was awarded by arbitration. Of course, the purpose of the expropriation was to use the land for school purposes. It has never been so used. In late 1979 the petitioner became aware that the respondent intended to sell the existing parcel of land to the Intermediate Care Society of Prince George. These proceedings are the result.

On March 22, 1966 the school board, by resolution, selected the petitioner's property as the site for a new 16 room elementary school in the City of Prince George. When an agreeable price could not be negotiated the matter went to arbitration which resulted in the award referred to above. An attempt by the school board to upset the award in the courts was unsuccessful.

The school board also acquired some adjacent Crown land in order to have a large enough area for the project. An architect was retained and some site plans were prepared. There were two or more meetings between school board officials and City of Prince George officials concerning services to the property.

In January, 1967 the school board received a comprehensive report from Mr. Desmond Parker, a local architect and planning consultant, dealing with "....the need, location and site of new

school facilities in the newly developing regions of Prince George". The report suggested that the area in which the expropriated land was situate (known as the Van Bow area), because of nearby elementary schools, wouldn't need a school "for a few years". However, the report did anticipate rezoning that would permit the construction of high density residential buildings and a substantially increased school population. For that reason it was recommended that the existing school site should be kept.

In the spring of 1968 Mr. Parker prepared a report for the City of Prince George which dealt with the Van Bow area and made recommendations for its general use. The report was, apparently, received by the respondent. It suggested that the best future use of the area was for "relatively high density" residential buildings "providing sufficient population to justify an elementary school" in the area.

On October 15, 1971 Mr. Parker submitted a further report to the City of Prince George. That report also found its way to the respondent. It dealt with various aspects of land and housing development in several areas of the city. Included was an elementary school review for those areas, including the Van Bow area. The report concluded, in effect, that if the school site itself was retained there would be less land available for multiple family development and the school would not be needed. Two alternatives were recommended to be considered: (a)since the site was then adjacent to a park it could be used jointly for kindergarten and other facilities, or (b) the site could be given up (presumably for residential development) and an overpass could be constructed across a main street (Victoria Street) to give students safe access to another elementary school.

In February, 1972 the petitioner wrote to the respondent about buying the property back. The respondent sought and obtained a legal opinion to the effect that it had no such obligation.

Nothing further took place until January, 1978 when the respondent began to look into selling the property. Appraisals were obtained and, after fairly extensive consideration of the proper way to dispose of the property, a motion was passed on January 22, 1980 to sell the property to the Intermediate Care Society for $360,000. That society is interested in building and operating a facility for patients who require medical care that they cannot get at home but who don't require the full services of a hospital. The price agreed to is substantially below the appraised market value but it was felt by the school board that the price was reasonable for a sale from one public body to another. The price reflected the price paid for the property by the school board plus what was considered a reasonable rate of interest on that sum over the years since the expropriation. The school board also was influenced by the fact that development of the property for other then residential purposes would solve the dilemma set out in Mr. Parker's 1971 report.

The expropriated property contained 4.55 acres. Some of that property was taken by the City of Prince George in 1971 under the replotting provisions of the Municipal Act. As stated above the respondent acquired additional adjacent property by way of Crown grant. The existing parcel contains close to 7 acres. It is not clear from the evidence how much of the original 4.55 acres is included in the existing parcel but it must be most of it. The petitioner asks that the relief claimed be granted with respect to an appropriate proportionate share of the existing parcel.

There are two issues: (1) whether the expropriation

in 1966 was lawful, and (2) whether the statutory law gives the petitioner a right to reacquire the expropriated property or what remains of it.

On the first issue the petitioner has cited the following authorities: Earl Fitzwilliam's Wentworth Estate Company Limited v. The Minister of Town and Country Planning (1951) 2 K.B. 237; Campbell v. Municipal Council of Sydney (1925) 1 W.W.R. 660; Padfield v. Minister of Agriculture, Fisheries and Food (1968) 1 All E.R. 694; Secretary of State of Employment v. SLEF (1972) 2 All E.R. 949; Secretary of State for Education and Science v. Metropolitan Bureau of Tameside (1976) 3 All E.R. 665; Thompson v. Rendwick Corporation (1950) 81 C.L.R. 87; Council of the Shire of Werribee v. Kerr (1928) 42 C.L.R. 1; Lamb v. The Township of Estevan (1922) 70 D.L.R. 673; Boland v. C.N.R. (1926) 4 D.L.R. 193; Re: Thompson and the Queen in Right of Manitoba (1978) 89 D.L.R. (3d) 217; Bannerman v. Minister of National Revenue (1959) SCR 562 affirming (1957) C.T.C. 375; Hubley v. Halifax (1909) 7 E.L.R. 360; and Lord Carrington v. Wycomb Railway Company(1867) L.R. 3 Ch. App. 385.

Those cases deal in various ways and on a wide variety of factual situations with the broad principle that public bodies which acquire powers (such as the power to expropriate) must exercise those powers genuinely and only for the purpose for which those powers are entrusted to them. If the power is exercised for an unauthorized or improper purpose the courts will interfere. The party attacking the exercise of the power must prove the public body has acted improperly.

The proposition which the petitioner urges upon the court in this matter is, to quote from the written argument filed on behalf of the petitioner, "that subsequent evidence of collateral motive can be used to impeach a prior expropriating resolution". I am not

sure that that statement is what the law is or what it should be. In none of the authorities is it suggested that the fact that the expropriating authority doesn't actually use the property for the purpose for which it was expropriated renders the expropriation void. The question to be decided is whether the motive at the time of the expropriation was in accordance with the purpose set out in the enabling legislation. Of course, the court may look to subsequent dealing with the property to help answer that question but subsequent dealing is by no means determinative of the question of motive at the time of the expropriation.

In the present case it is clear that the respondent took the property by expropriation solely for the purpose of building a 16 room elementary school which it was honestly felt was needed. That is clear from the evidence given on examination for discovery by Mr. Robert Gracey, the secretary-treasurer of the school board until 1967. It also emerges from a perusal of the school board minutes. None of that evidence has been directly impeached in any way.

After the expropriation it was obviously felt, no doubt as a result of Mr. Parker's 1967 report, that the school would not be needed for a few years. Although no school was then to be built the property continued to be held for reasonably anticipated future needs. It was held for school purposes. After several years, because the demographic situation changed, the need for the school at that location became less apparent and the matter was left in abeyance until it was eventually decided to sell the property to another public body.

In all of the above developments the school board acted responsibly. I see no evidence to suggest that the expropriation was for anything other than for school purposes.

There is no merit in the petitioner's submission on the first issue.

The statutes to be considered on the second issue are the School Act, R.S.B.C. 1979, chapter 375, sections 166 to 176 (formerly the Public School Act, sections 169 to 175) and the Expropriation Act, R.S.B.C. 1979, chapter 117, sections 110 to 112 (formerly the Lands Clauses Act, sections 112 to 114). Which statutes have application has not been clearly argued by the parties but, with one exception that will be dealt with briefly, nothing in this case is affected by the changes in the wording of the statutes since 1966. As counsel have done in their written arguments I will refer to the two statutes as they are now worded.

Sections 166 to 176 of the School Act read as Follows:

> 166. (1) The board of a school district may acquire, by expropriation or otherwise, and hold land and improvements for school purposes, which include dormitories, teachers' residences and school board offices.
>
> (2) All corporations and persons, tenants, guardians, personal representatives and other trustees, not only for themselves and their representatives and successors, but also for those they represent, whether infants, issue unborn, mentally disordered persons or others having an interest in land, may contract for, sell or convey all or part of it to a board for a site for a building or an extension of a building or site, and the contract, agreement for sale and conveyance shall be valid and effectual to all intents and purposes. The persons conveying are indemnified for what they respectively do under this Act.
>
> (3) The board, subject to the approval of the minister, may dispose of land or improvements, or an interest in either
>
> 167. (1) Assets acquired by a board shall be acquired only in the name of the board, and assets used by the board which are vested in a municipality may be transferred without charge, by agreement between the board and the municipality, to the board or remain vested in the municipality.
>
> (2) Liabilities of the board of a school district shall be incurred in the name of the board, except that where a debt incurred before this Act came into force by a municipality for school purposes remains unpaid in whole or in part the liability shall be a liability of the board of the school district in which the municipality is situated, and the incidental charges by way of interest and principal

repayment on the debt shall form part of the expenses of the board.

168. (1) When a site for a school building, dormitory, teacher's residence or school board office is required, the board shall select it with due consideration for all pertinent information and advice.

(2) Where the board neglects, fails or for a reason is unable to reach a decision on the selection of a necessary and suitable site for a building, it shall notify the minister of the neglect, failure or inability, and the reasons for it.

(3) Except as provided in subsections (4),(5) and (6), the erection by a board of a new building shall not be commenced on a new site unless title to the site is held by and property in the site is vested in the board.

(4) A board may, with the minister's prior approval, enter an agreement with municipalities or regional districts that are in or part of the school district for the purposes of constructing, maintaining, operating or using jointly, or contributing to the cost of the construction, maintenance or operation of, facilities for community use on a site the title of which vests in or is held by the board, the municipalities or the regional districts, or on a site leased by either of them from the Crown in right of the Province.

(5) Where an agreement has been entered under subsection (4), expenses of the board for the maintenance or operation of the facilities shall form part of the operating expenses of the board, except that portion which applies to community use which shall be accounted for through a trust fund established under section 240(3).

(6) A board may, with the minister's prior approval, erect a new building on a site, the title to which is vested in the Crown in right of the Province or in which the Crown has a leasehold interest.

169. (1) The Lieutenant Governor in Council may grant the board of a school district, in trust for school purposes and as a site for a school building, dormitory, teacher's residence or school board offices, the unoccupied and unappropriated Crown land that may be required, or land acquired by the Crown for school purposes in the school district, and situated in it.

(2) The land granted shall be held by the board in trust for those school purposes, and shall not be disposed of either by public auction or private sale, except with the consent of and on terms and conditions first approved by the Lieutenant Governor in Council.

(3) Where the land granted is no longer required for those school purposes, the minister may notify the registrar of the land title district in which the land is situated, and the registrar shall then cancel the registration of the board's title on his records.

170. Where land or improvements are disposed of by a board, any money arising from the disposition shall be paid to the board, and shall be expended only for the capital purposes and in the amounts approved by the minister.

171. (1) Where the board has selected a site for a building or for the extension of a building or site, the board may cause to be deposited a plan of it, together with a notice describing the land shown on it and setting out that they are required for school purposes, in the proper land title office, and in that event shall publish a copy of the notice in at least one newspaper published or circulating in the school district in which the land is situated.

(2) The deposit of the plan and notice and the publication of the copy of the notice shall be deemed a general notice to all persons that the land shown and described in them is required for school purposes.

(3) The date of deposit shall be the date with reference to which compensation shall be ascertained if the owner and the board of school trustees cannot agree on the price.

172. (1) If,within 30 days after the date the plan is deposited or the date the notice is published, whichever is later, the owner of the land does not sell or effectively bind himself to sell the land to the board for a price considered reasonable by the board, then the owner and the board shall each within 15 days appoint an arbitrator, and the abitrators thus appointed, together with a person chosen by the arbitrators appointed as third arbitrator and chairman, shall, within 10 days after the appointment of the arbitrators by the parties to the arbitration proceedings, determine the compensation to be paid for the land and improvements.

(2) If the board or the owner of the land neglects or refuses to appoint an arbitrator within the 15 days, the minister shall appoint an arbitrator who shall be deemed to have been appointed by the board or the owner, whichever or whoever neglected or refused to appoint an arbitrator.

(3) If the arbitrators appointed by the parties to the arbitration proceedings fail to appoint a third arbitrator, the minister shall appoint a third arbitrator who shall be the chairman.

173. (1) If only a majority of the arbitrators appointed to determine the matter are present at a lawful meeting, in consequence of the neglect or refusal of the other arbitrator to meet them, those present may either make and publish an award on the matter submitted to them, or adjourn the meeting for a period not exceeding 10 days, and they shall give the absent arbitrator notice of any adjournment.

(2) The arbitrators may hear and determine all claims

or rights of encumbrancers, lessees, tenants or other persons, as well as those of the owner in respect of the land selected, on notice in writing to every such claimant or person.

(3) The amount to be paid by way of remuneration to an arbitrator shall be as provided in the Arbitration Act, and the expenses and remuneration of the arbitrators shall be paid by the parties to the arbitration in accordance with the award or decision of the arbitrators.

174. (1) If the owner of the land is absent from the county in which the land lies, or is unknown, the board, after the deposit of the plan and the publication of the copy of the notice, may procure from a land surveyor an affidavit that he is not interested in the matter, that he knows the land, and that he believes a certain sum named in the affidavit is a fair compensation for the land and improvements. On filing the affidavit with the County Court of the county or portion of a county in which the land lies, accompanied by an affidavit which satisfies the court that the owner is absent from the county, and that after diligent inquiry he cannot be found, or that the owner is unknown to the board, the court may order a notice to be inserted for the time he sees fit in a newspaper published or circulating in the county, and in addition, that a notice to be sent to any person by mail, or may direct service of it to be effected in any other way he sees fit.

(2) The notice shall contain a description of the land and a declaration of the readiness of the board to pay the sum certified, shall give the name of a person to be appointed as the arbitrator of the board if its offer of that sum is not accepted, shall name the time within which the offer is to be accepted or an arbitrator named by the owner, and shall contain the other particulars the judge directs.

(3) If, within the time the court directs, the owner does not notify the board of the acceptance of the sum offered by it, or notify the board of the name of a person whom he appoints as arbitrator, the judge shall, on the application of the board, appoint a land surveyor to be sole arbitrator for determining the compensation to be paid for the land and improvements.

175. (1) On tender by the board of payment of the amount of compensation determined by an award under this Act to the owner or other person entitled to it, or on its payment into the Supreme Court under this Act, the land and improvements may be taken by the board and used for the purposes for which it was selected.

(2) The award made and published under this Act determining the compensation to be paid by the board for any land and improvements, if there is no proper conveyance by the owner of the land to the board of school trustees, shall be deemed to be the title of the board to the land mentioned in it, and shall be registered in the proper land title office on the affidavit of the secretary of the board verifying it, and on proof of the tender of payment

into the Supreme Court under this Act of the amount of compensation awarded, and then is a good title against all persons interested in the land in any manner.

(3) If

(a) the board has reason to fear claims or encumbrances against the land;

(b) a party to whom the compensation determined by the award or a part of it is payable refuses to execute a proper conveyance of the land to the board;

(c) the party entitled to claim the compensation cannot be found or is unknown to the baord; or

(d) for any other reason the board of school trustees considers is advisable, the board may pay the arbitration and other expenses, and pay the amount of the compensation into the Supreme Court, with interest for 6 months, accompanied by a copy of the award.

176. Where land is taken by the board without the consent of the owner, the compensation to be paid shall stand in the stead of the land; and after the board has taken possession of the land, any claim to or encumbrance on the land or a portion of it shall, as against the board, be converted into a claim to the compensation or to a part of it, and the board is responsible accordingly when it has paid the compensation or a part of it to a person not entitled to receive it, saving always its recourse against that person.

Sections 110 to 112 of the Expropriation Act read as follows:

110. Within the prescribed period, or, if no period is prescribed, within 10 years after the expiration of the time limited by the special Act for the completion of the works, the promoters shall dispose of land acquired by them under this or the special Act, or any Act incorporated with it, but which is not required for the undertaking, except any land which may, by any special Act, or any Act incorporated with it, be permitted to be purchased and held. They shall apply the money from the sale to the special Act; and in default all superfluous land remaining unsold at the expiration of the period vests in and becomes the property of the owners of the land adjoining in proportion to the extent of their land respectively adjoining it.

111. (1) Before the promoters dispose of superfluous land, they shall, unless the land is within a municipality or is land built on or used for building purposes, first offer to sell it to the person then entitled to the land, if any, from which they were originally severed.

(2) If the person refuses to purchase the land, or cannot after diligent inquiry be found, then the same offer shall be made to the persons whose land immediately adjoins

> the land proposed to be sold, those persons being capable of entering into a contract for the acquisition of the land; and where more than one person is entitled, the offer shall be made to them in succession, one after another, in an order the promoters think fit.
>
> 112. If a person wishes to purchase the land, then within 6 weeks after the offer of sale he shall advise the promoters. If a person declines the offer, or if for 6 weeks he neglects to advise the promoters, his right to purchase the land included in the offer ceases; and an affidavit made, by some person not interested in the matter in question, stating that the offer was made and was refused, or not accepted within 6 weeks from the time of making it, or that the person or all the persons entitled under section 111 were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of the land, is in all courts sufficient evidence of the facts stated in it.

The petitioner contends that the provisions of the Expropriation Act are to be read with and applied to the School Act, that the respondent is attempting to dispose of superfluous land, and that the petitioner is entitled to a right of first refusal under section 111(1) of the Expropriation Act. The respondent's position is that the School Act contains a complete code for the acquisition and disposal of land and it is not necessary or correct to incorporate the provisions of the Expropriation Act referred to above; and that, in any event, the wording of sections 110 and 111(1) exclude the application of those provisions to the disposal of land by a school board under the School Act.

The petitioner relies upon the following authorities: Minister of Highways for British Columbia v. British Pacific Properties Ltd. et al (1960) 23 D.L.R. (2d) 305 and Re: Van Oyen et al and Kelowna Nurseries Ltd. et al (1979) 101 D.L.R. (3d) 255.

In the British Pacific Properties case the Supreme Court of Canada held that the injurious affection provisions of the Lands Clauses Act were to be applied in assessing compensation for land

expropriated under the Highway Act. The latter statute restricted compensation to the land and buildings taken. The court held that injurious affection, being loss sustained by the owner suffering expropriation to adjoining land he retains after the severence, is part of the compensation to be given for the lands taken. Therefore, the Highway Act did not contain a complete code on the subject of compensation and the provisions of the Lands Clauses Act applied.

In the Van Noyen case Macfarlane, J. (as he then was) of the B.C. Supreme Court held that the expropriation provisions of the Water Act were not to be read with the LandsClauses Act. At page 266 he said:

> In summary I have concluded that the Legislature, in enacting the Water Act, intended that the provisions of the Act, and of the Regulations made thereunder, should constitute a complete code with respect to the matters to which the Act applied. In my opinion the more general clauses and provisions of the Lands Clauses Act must be taken to have been superseded by the more specific provisions of the latter statute.

I think that there must be the same result in the present case. The provisions of the School Act set out above do contain a complete code as to the disposal of superfluous land by a school board. By section 166(3) a school board may dispose of land subject to approval of the Minister of Education. No rights are given to the original owner or anybody else to interfere. That subsection does not limit the application of that power to land acquired other than by expropriation. Subsection (1) of the same section gives the school board the power to acquire land "by expropriation or otherwise" so there is no basis for holding that the power of disposal in subsection (3) should by implication exclude land acquired by expropriation. The power to so dispose of land is entirely inconsistent with sections 110 and 111(1) of the Expropriation Act and those provisions are

necessarily excluded.

The School Act is a "special Act" referred to in section 110 of the Expropriation Act. The School Act prescribes no time period for the "completion of the works" and no time period for the disposal of superfluous land. Also, the School Act permits a school board to purchase and hold land. For these reasons section 110 would have no application even if the subject matter was not fully covered by the School Act.

Section 111(1) of the Expropriation Act excludes a right of first refusal if the land is within a municipality. The land in question is and has been at all material times within the City of Prince George. Under section 113 of the Lands Clauses Act the exclusion applied if the land were "situate within a town". The petitioner argues that the land was vacant and was at the edge of the built up portion of Prince George at the time of the expropriation. Therefore, it was not within a town. That argument fails for two reasons. Firstly, the wording in both the Expropriation Act and its predecessor, the Lands Clauses Act, suggests that the critical time to make the determination is at the time of disposal or intended disposal. It is clear from the evidence that the land was within a town when the respondent first considered disposing of it. And secondly, the applicable definition of "town" in the Shorter Oxford English Dictionary is as follows: "Now commonly designating an assemblage of buildings, public and private, larger than a village, and having more complete and independent local government; applied not only to a 'borough' and a 'city', but also to an 'urban district', and sometimes also to small inhabited places below the rank of an 'urban district'." That definition applies as of 1966 to the area in which the land is located and at all times thereafter. Accordingly, section 111 would have no

application in any event.

The claims of the petitioner are denied. Costs may be spoken to.

Richard T. Low
County Court Judge

October 13, 1982
Prince George, B.C.