In the High Court of Fiji at Suva

Appellate Jurisdiction HBANo.18 of 2002

Between: 1. Garbha Nand

2. Suva City Council

Appellants

And:

1. Carpenters Fiji Limited

2. Carpenters Properties Limited

3. Carpenters Trust Fiji Limited

Respondents

Appearances: Mr Ronald Singh for the appellants

Ms Bhavna Narayan for the respondents

Date of argument: 5th September, 2012

Judgment

1. This appeal arises from a judgment of the Magistrates Court, on a rating appeal under section 70 of the Local Government Act.

2. *Sequence of events*

   (a) The appeal was heard before Jitoko J on 17thJune,2003. Judgment was on notice.

   (b) On 16thNovember,2011,the High Court Registry informed Messrs Munro Leys and Messrs Lateef and Lateef, Solicitors for the parties that this case will be called on 7th December, 2011.

   (c) On 7th December,2011,and 17th January,2012, the appellants were represented by counsel, who sought further time to get instructions from the appellants.The respondents were absent and unrepresented.

   (d) On 21st February, 2012, the matter was fixed for argument before me on 5th September, 2012. NOAH was issued to Messrs Lateef and Lateef.

(e) On 4th September,2012, Messrs Lateef and Lateef informed the Chief Registrar that the *"NOAH..was not circulated in*(their)*office*", they"*do not hold formal instructions nor are able to locate* (their) *file*". The letter concluded that the hearing will "*not proceed tomorrow*".

(f) On 5th September, 2012,Ms Narayan moved for an adjournment on the grounds that the NOAH was misplaced at her office,she has no instructions and cannot proceed to argue this appeal.I declined the application. Counsel had adequate time to obtain instructions.

The determination

3. This appeal is concerned with the valuation of three properties at Pratt Street: CT 1387, CT 4533 and CT 850 belonging to the respondents. The first appellant valuer had made a rating valuation of these properties for the Suva City Council, the second appellant. He valued the properties at $ 764,000.00,$ 370,000.00 and $ 1,715,000.00 totalling $2,849,000.00.The respondents' valuation was: $505000.00,$235,000.00 and $1,215,000.00.totalling $ 1,955,000.00. The Magistrates Court set aside the valuation made by the first appellant and ordered that the rate book be altered in accordance with the valuation submitted by the respondents.

4. The appellants appeal on the following grounds:

> *(1) The Magistrate erred in fact and in law in setting aside the Appellant's valuations of CT 1387 (incorrectly referred to in the judgment as CT 1367),CT 1387(incorrectly referred to in the judgment as CT 1367),CT4533 and CT850 ("the said properties").*
> *(2) The Magistrate failed to find any error in the Appellant's methodology applied to the valuation of the said properties or to find that the valuation was unreasonably high when compared to other land of a comparable nature or that the Appellant had failed to take into account any factor which might justify the Order setting them aside and accordingly erred in doing so.*
> *(3) Having correctly found the need for consistent methodology to be applied by the Appellant in order to be fair to all ratepayers in valuations for rating purposes under the Local Government Act the Magistrate erred in departing from that principle of consistency.*

(4) The Magistrate erred in considering the said properties in isolation without having regard to the Unit foot values assessed by the Appellant for properties in their immediate vicinity, thus destroying the principle of consistency which he advocated.

(5) The Magistrate erred in admitting the Respondent's Valuer's evidence of sales in July 1999, 7 months after the effective date of the Appellant's valuation of 1st January 1999 as the sole basis for setting aside such Valuation when the Valuer was bound to have regard only to sales evidence prior to the date of his valuation.

5. The first ground of appeal contends that the lower court erred in setting aside the first appellant's valuation.

6. The second ground urges that the Learned Magistrate failed to find an error in the first appellant's methodology of valuation.

7. The third ground takes issue with the Learned Magistrate departing from the principle of consistency, albeit he accepted the need for consistent methodology to be applied, in order to be fair to all ratepayers.

8. The fourth ground of appeal takes issue with the lower court not accepting the "*unit frontage*" system of valuation used by the first appellant.

9. The ultimate ground of appeal takes issue with the respondents' valuation of sales subsequent to 1st January,1999, the date of the first appellant's valuation.

10. At the hearing in the lower court, the respondent, in challenging the valuation, called a valuer, Makereta Bogitini. It transpired in cross-examination that this was the first time that she had done a rating valuation, as observed by the Learned Magistrate in his judgment.

11. The first appellant,(formerly, a valuer at the Lands Dept) had testified. His valuation was at 1st January,1999. In his evidence, he said that there was a steady increase in property market, since 1993. There was no sale of a vacant site in Pratt Street.

12. It emerged that the first appellant and the respondents' valuer had employed distinct methodologies in the following respects.

13. Firstly they had used different methods to convert leasehold land to fee simple. The respondents' valuers applied a 70-30 rule to obtain the freehold value. The first appellant had looked at the unexpired term of the lease and used 8% per annum as rate of return. The first appellant said that this formula was used in valuations under the Local Government Act. On this point, the lower court observed that the respondents' valuers approach "*though attractive for its simplicity also has flaws to it. It ignores the residual term of lease*".

14. The second point of disagreement was the valuation of structures on properties. Section 58 of the Local Government Act stipulates that a council may levy a general rate on the "*unimproved value*" of the land. Section 63 states "*unimproved value*" means :

> *the capital sum which the land, if it were held for an estate in fee simple unencumbered by any mortgage or charge thereon, might be expected to realise at the time of valuation or revaluation if offered for sale on such reasonable terms and conditions as a bona fide seller might be expected to require and assuming that the improvements if any, thereon, or appertaining thereto had not been made.*

15. In terms of this provision, "*unimproved value*" is the value a bona fide seller might expect for the land free from all encumbrances on charges and any improvements. Buildings and structures are considered to be non-existent, as observed by the Learned Magistrate.

16. The appellants had placed a standard replacement cost for all properties, irrespective of the shape and size of the building. The respondents had used a different barometer. The two valuers also differed in calculating depreciation costs. In my view, clearly there would be a difference of opinion between valuers, in these areas. I would refer to a statement in the written submissions filed by the respondents in the lower court – "*the chances of getting two valuers coming up with the same depreciation rule for the same building at first attempt are very slim*".

17. Next, the respondents' valuer had used a unit meter frontage method. In her testimony, she said this takes into account "*frontage and corner.frontage and depth of site into consideration into more detail than area method*". The first appellant, in his evidence, said that he was he could not understand the unit meter frontage method. He used the "*unit foot value*" method, analysing sales as at the date of valuation.

18. That takes me to the valuation of sales subsequent to the first appellant's valuation, as adopted by the respondents' valuer. The Learned Magistrate said that was a "*very weighty piece of evidence.. so soon after the* (first appellant's) *valuation which cast a pall of doubt on the accuracy of* (his) *figures*". He relied on a decision of a Central Agricultural Tribunal following an Australian case, which held later sales are admissible.

19. In my judgment, it is contrary to the concept of "*uniformity*" enshrined in section 64 (5) of the relevant statute and inequitable to other ratepayers if sales, subsequent to valuation are taken into account. It stands to reason that a cut off date is applied universally across the board.

20. I agree with the contention of the appellants that valuations must be based on evidence of sales, as at the date of valuation. I read the following passage of Isaacs J in ***Spencer v The Commonwealth,***(1907) 5 CLR 418 at 440 as cited in the appellants' written submissions:

> *All circumstances subsequently arising are to be ignored. Whether the land becomes more valuable or less valuable afterwards is immaterial. Its value is fixed by statute as on that day. Prosperity unexpected, or depression which no man would have anticipated, if happening after the date named, must be alike disregarded. The facts existing on (the relevant date) are the only relevant facts.*

21. In my view, the respondents were required to demonstrate, in the words of the Divisional Court in ***R v Paddington Valuation Officer and another, ex parte Peachey property Corp Ltd,***(1965) 3 WLR 426 as restated by Lord Denning MR that " "*the valuation officer has so misdirected himself on some fundamental matter or*

matters which so vitiate the value of his work that it must be regarded as worthless"". In the appeal, Lord Denning MR concluded: "*In short, there must be an error which goes to the root of the list or a large part of it*"-(1965) 3 WLR 426 at page 437.

22. In ***Sharon Ali and Lautoka City Council v Trustees of Lautoka Golf Club,***(Civil Appeal 16 of 1987) the FCA stated:

> ***There is no doubt in our minds that the onus of proof in rating appeals in Fiji lies on the party who seeks to assert that the valuation is incorrect.***(emphasis added)

23. The Learned Magistrate cited the above passage, at the commencement of his judgment and stated that the "*onus of proof is on the appellants and the reason must be convincing for the court to direct that the rate book be altered*". The Learned Magistrate then, said "*both approaches have short comings but both valuers have advanced an approach each*". He quite correctly concluded that "*Neither has proved the other wrong or as being incorrect*"(underlining mine).

24. But having reached that conclusion and resonating that there has to be uniformity in the assessment of rates on properties in comparable areas so that "*even a single rate payer is not treated preferentially over others"*, the Learned Magistrate erroneously rejected the first appellant's valuation and accepted the respondents' valuation.

25. Interestingly, the Learned Magistrate accepted the reality that a valuation cannot be carried out with "*mathematical accuracy. The valuer quite properly agreed to this and said if a third valuer were to value the properties, he would come out with different figures. There is always room for differences in figures*". In support of this proposition, the following passage from the judgment of ***Singer and Friedlander vs John D Wood and Company***,(1977) 248 EG 212 at 213 was cited:

> *The valuation of land by trained, competent and careful professional men is a task which rarely, if ever, admits of precise conclusion often beyond certain well – founded facts so many imponderables confront the valuer that he is obliged to proceed on assumption. Therefore he cannot be faulted for achieving a result which does not admit of some*

> *degree of error. Thus two able and experienced men, each confronted with the same task, might come to different conclusions without anyone being justified in saying that either of them lacked competence and reasonable care, still less integrity, in doing his work.*

26. In my judgment, this appeal succeeds.

27. ***Orders***

(a) The appeal is allowed.

(b) I set aside the judgment of the Learned Magistrate of 2nd May,2002.

(c) The respondents shall pay the appellants costs summarily assessed in a sum of $ 2500.

19th January,2015

A.L.B.Brito-Mutunayagam

JUDGE