IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Appellate Jurisdiction
Civil Appeal No. 14 of 1977

Between

J.N. SINGH - The Official Valuer — Appellant

and

THE TRUSTEES OF LAUTOKA GOLF CLUB — Respondent

Mr. B. Sweetman, Counsel for the Appellant
Mr. K.P. Mishra, Counsel for the Respondent

JUDGMENT

This is an appeal against the valuation of the Lautoka Golf Club property at Lautoka. The last general valuation of Lautoka was made in 1970 but at that time the Golf Club was not included in the town. When the town was extended in 1971 to include the Golf Club inter alia the statutory method of valuation would have been to make a valuation on the same basis as the former valuation. But by the time the valuation came to be made the old Townships Ordinance Cap. 106 had been replaced by The Local Government Act 1972, and the appeal was lodged under The Local Government Act 1972 and not under the repealed Townships Ordinance. The appeal was lodged in November 1975 and the main ground of appeal was that the golf course had been zoned as recreation (land) and as such had no market value. The second ground was merely the converse of that, that bearing in mind the usage and zoning of the area the valuation was wrong in principle. The appeal did not come to trial until September 1977 and when it did Mr. Mishra for the appellant made a submission that the respondent should begin. In view of the jejune nature of the appellants' evidence, that course probably saved the appeal from being dismissed out of hand. So respondents led their evidence. It appears that there are two properties owned by the Golf Club, one containing 69 acres 2 roods 19 perches which is valued at $48,650 and the other containing 3 roods 39.5 perches which is valued at $4,500. The Council's valuer gave evidence and stated that he sought for comparable transactions and found three other similar civic transactions. They were first the Fiji Pine Scheme's office at the corner of Tavewa Avenue. There the area was 4

acres 0 rood 24 perches and the price which was paid on 17th February 1971 was $19,353.56. Secondly there was the site of the Supreme Court containing 2 acres 24 perches purchased by the Government for $10,000 in May 1970. This was purchased specifically for a Court House. Thirdly there is a property sold by the Colonial Sugar Refining Company Limited to the Gujerat Education Society and bought for the purpose of a school. The area is 12 acres 2 roods 30 perches and the property was bought for $38,062.50. That was on 19th January 1972. That area is situated directly opposite the Pine Scheme site. The fact that these three properties are all situated within about 200 yards of one another, whereas the Golf Club's property situated about a mile or so away naturally somewhat limits their use by way of comparison. There is little doubt that the main criterion was that these were the only properties within the Town area which had been given civic zoning, although they have none of them any designation of public recreation space use. It will also be noted that all of these sales were made after the general valuation of 1970 which is the criterion of the present valuation.

The properties have all now been built upon, and I am not prepared at all to categorise a Courthouse site, a school site or a government building site as being designed for recreational space or use. On the contrary I would regard them as being all for particular functional use and indeed the fact that their zoning although civic is not designated as public open space is indicative of this. The valuer gave evidence that he and his colleague analysed the sale figures which I have set out above. They took the sale price of the Gujerat school site, which is the lowest, just as the area is the greatest, as the most suitable for their purposes and started off with a figure of $3,000 an acre. Then the valuers deducted 10% for pipe line and pylon easements and a further 15% reduction for the undulating contours, and a further 40% to compensate for its size. These were all deductions from the original figure and they brought the figure down even lower by a reduction of a further 33% because of the zoning and posion of the land in question, and arrived at a figure of $700 an acre for the Golf Course.

The learned Magistrate ordered a revaluation. He considered that the differences between the land the subject of the valuation and the lands which the valuers had used for purposes of comparison were so great that the comparison could not properly found a proper valuation

of the golf course. He therefore set aside the valuation and ordered a fresh valuation as authorised by section 71 of the Local Government Act. He held that the proviso to section 63 applied, and he considered that the valuers should have considered the possibility of a change of zoning. H e further considered that the two pieces of land should have been valued together, since they were both portions of the golf course.

There is no evidence that any allowance was made for the possibility that the value of the land might have been increased by reason of the likelihood of the land being permitted to be used for some other purpose than that designated - in other words that the zoning might have been amended, but in view of the fact that the present valuation was to be treated as made at 1st January 1970, and another valuation has since been made and the zoning has not been altered, I regard that as too speculative to be of any significance, and I do not consider that it required to be taken into account although it will require to be taken into account on a later valuation and regard paid to the comments of Perry J in Re an Arbitration Auckland Hospital Board and Auckland Rugby League (1966) NZLR 413, particularly at page 423 and seq. The Lautoka City Council submitted that the learned Magistrate erred in his interpretation of section 63 of the Local Government Act 1972. Its main contention there was that the proviso has no relevance to the appeal. Perhaps I should set out section 63 in its entirety. It is as follows:

> "63. For the purpose of ascertainment of unimproved value under the provisions of this Act "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:
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> Provided that in any valuation of land on which structures have been erected such valuation shall take into account the actual use of land and not the use for which the land is zoned under any existing planning scheme."

Counsel for the appellant points out that although the effect of section 63 was not to alter the general method of valuation prescribed by the ordinance which it replaced, the proviso is entirely new and submits that although section 4(5) of the Local Government Act 1972 which reproduces the former legislation is applicable, the proviso to section 63 has no application. Section 64(5) is as follows:

" 64.-(5) Any valuation made between general valuations shall be made on the basis of values subsisting as at the date of the last preceding general valuation so that the new valuation will preserve uniformity with existing rateable values of comparable parcels of land."

I accept that submission. The learned Magistrate appears to have misdirected himself in overlooking the fact that not only was the golf course now in its inclusion in what was then the town, but is now the city of Lautoka, but both the Act of 1972 and the proviso were new, and although most of the procedure of the former Towns Ordinance was carried unaltered into the new act, the proviso to section 63 had no counterpart in the previous legislation. The question of the use of the golf course will fall to be taken into consideration on a subsequent valuation of this land. (see Valuer General v General Plastics (NZ) Limited 1959 NZLR 857.)

I reject also the suggestion that the valuer should have taken into account any encumbrances upon the land. What the valuer has to do is to calculate the capital sum which an estate in fee simple unencumbered by any mortgage or charge thereon might be expected to realise. It is the fee simple with which the valuer is concerned. As Lord Radcliffe says in the opinion of the Privy Council in Gollan and Randwick Municipal Council (1961) A.C. 82, 94

" It is not in dispute that a formula of this kind requires the making of certain hypotheses. A sale of the fee simple has to be assumed whether or not the land in question can legally be sold, and the fact that there is some lawful impediment to sale cannot be allowed to enter into the assessment of value. Similarly, it is irrelevant that the land may be so settled or encumbered that there is no single person or even combination of persons who can at the relevant date effectively transfer the fee simple. All this follows from the fact that a sale of such an estate has to be assumed. Again, the valuer must not merely treat any improvements as not being there, he must proceed on the basis that they have never been there at all: see Toohey's Limited v Valuer-General (1925) A.C. 439."

Gollan's case dealt with the valuation of the Randwick racecourse near Sydney, of which the fee simple is held by trustees who have no power of sale, and who hold the land for specified sporting purposes, of which the principal one is for horseracing, and who operate under a trust deed made with the Crown when the land was originally vested in trustees in 1863. The question at issue in this case was whether in ascertaining the unimproved value of the land according to a statute which defines 'unimproved value' in substantially the same words as section 63 of the Local Government Act, the valuation should take account

of the restrictions imposed by the trust deed. Lord Radcliffe poses the question in this way at page 94 of the report. "Is the fee simple assumed to be sold a "pure" estate in the land without reference to the actual title under which it is held, or is it that actual title, with the consequence that there enters into the valuation notice of any restrictions on user and enjoyment by which the title is affected?" The answer returned by the Privy Council was that in valuing the land the trusts restrictions conditions and provisoes contained in the grants even though they were confirmed by Act of Parliament were not to be taken into consideration. "Prima facie" says Lord Radcliffe at page 101 "it appears to their Lordships "the fee simple of the land" as used in section 6" (of the New South Wales Valuation of Land Act 1916-1951, substantially, as I have already said, in accord with the Fiji section 63 of the Local Government Act) "does not refer to the actual title vested in the owner at the relevant date but to an absolute or pure title such as constitutes full ownership in the eyes of the law."

This concept had, however, been held to be restricted by statutory restrictions in the Royal Sydney Golf Club v Federal Commissioner of Taxation (1953) 91 C.L.R. 610, an Australian case in which the High Court of Australia decided that while the fee simple to be valued might well be the fee simple without reference to restrictions in the title, restrictions having application under the general law were proper matters to be taken into account. The Royal Sydney Golf Club case above cited was approved by the Privy Council in Collan's case. Restrictions of this nature would include those imposed by the provisions of town planning schemes or municipal by-laws. The High Court at page 624 said "There is all the difference between a public law affecting the enjoyment of land and a restriction of title." The evidence given before the learned Magistrate here shewed that in 1972 a provisional town planning scheme was prepared for Lautoka, and a plan was produced to the Court shewing the effect of that town planning scheme. That plan shewed the golf course and its appurtenant clubhouse site as zoned for civic development and designated for public open space as a golf course. The effect of such a scheme is indicated by section 24 of the Town Planning Act cap. 109 which states that it shall be the duty of the local authority to enforce the observance of the requirements of a scheme in respect of all development of any description thereafter undertaken within the area to which the scheme applies. Moreover any development which involves modification or alteration of the scheme is subject to the consent of the Director of

Town Planning. I think it is correct to say that there has been no attempt to modify the scheme in respect of the land the subject of this appeal.

The definition of "unimproved value" given in section 63 of the Local Government Act 1972 is substantially in conformity with that adopted in New Zealand and the Australian states and expressed by the High Court of Australia in Spencer v Commonwealth of Australia (1907) 5 CLR 418, which in effect defined value as the price which a property could be expected to realise if sold by a willing but not anxious buyer at the date at which the valuation is required to be ascertained. Thus the valuer is obliged to visualise the ideal sale where both parties to the transaction are prudent, well-informed and unaffected by any abnormal influence which would deprive the sale of weight as a criterion of value. The land is to be valued for the most advantageous purpose for which it is adapted. In taking into account that highest and best use of the land it is necessary to have regard only to those uses which are legally possible. It is in this matter of uses which are legally possible that zoning arises as a matter to be considered. I have already pointed out the way in which a statutory planning scheme which restricts the use of land except for particular purposes can reduce the value of the land. It must however be noted that the effect of the restrictions is to reduce the market value of the land, not to destroy the market value altogether.

I think it is common ground that the lands which were chosen by way of comparison were the only sales of freehold land in the area because in fact there was very little freehold land in the town prior to the sale of quite a large area by the Colonial Sugar Refining Company Limited to the Lautoka Town Council some short time prior to the valuation of 1970, secondly that these areas were the largest areas of such freehold land in Lautoka, the prices at which the Colonial Sugar Refining Company Limited sold the land were much less than would have been obtained by that company had the land been put on the open market, and sold without restrictions. The action of the valuers in taking one property as the most appropriate for valuation purposes rather than averaging out the values of comparable properties has been judicially approved in Australia in Daandine Pastoral Pty. Co. Ltd. v Commissioner of Land Taxation (1943) although the report is not available in Fiji.

The learned Magistrate, as I have pointed out, considered the three properties used by the valuers by way of comparison as unsuitable, and to some extent, as will be seen, his view must find

support. However, although the Act specifically gives the court on appeal, power to order a fresh valuation, in my view that course should be taken only when no other is possible. I am conscious that such a course was taken by Carew J in the Supreme Court of Fiji in Tetzner v Colonial Sugar Refining Company (1958) A.C. 50 before that case went to the Privy Council and the former valuation was restored. I am aware also that valuation court practice usually demands that where an objection to a valuation fails, the valuation appealed against is normally confirmed see per Else-Mitchell J in Parramatta City Council v Valuer-General (1964) L.G.R.A. 160, 175. Here, of course there is no question but that the objection to the valuation has failed. I am extremely unwilling to remit this case for a fresh valuation owing to the fact that the present valuation alludes to a state of affairs which originated in 1970, and the normal sexennial valuation prescribed by section 64 of the Act will doubtless have been made and may very well in due course form the subject of appeal. There is in evidence the valuers' valuation of Churchill Park, which I am told from the Bar is an area of 21 acres 27.2 perches at $3,150 per acre. That area is zoned as civic - public recreation, and designated as open space and its valuation compares favourably with the $3,000 an acre ascribed to the area under consideration. However, the valuation was made in 1970, and the towb planning zoning was done later, so that no allowance can have been made at the time of valuation for the zoning of Churchill Park. In the High Court of Australia Kitto J in Royal Sydney Golf Club v Valuer-General (1957) 97 CLR 379 which was a continuation of the case I have already referred to, held that the proper way of valuing land subject to town planning restriction was to value it on the basis that there was no possibility that it would ever be turned to other than recreational purposes rather than ascertaining what value the land had free from restrictions and making a deduction to allow for the determination of value resulting from the restrictions. At page 391 he allows that the method adopted by the council's valuers here might be an acceptable method of allowing for restrictions which operate merely for a limited period, and in Parramatta City Council v Valuer-General (cit supra) which dealt with the valuation of the Rosehill Racecourse in Sydney, the city council's valuer had valued the land as free of restrictions and made a deduction of forty per cent to allow for the restrictions. However in the Rosehill racecourse case, the Court held that the land should be valued on the basis laid down by Kitto J., and I may say that this basis has also been accepted in New Zealand in Valuer-General v Addington Raceway Ltd. (1969) NZLR 327.

In spite of the criticisms I have made of the Council's valuers, and of my acceptance of the principles laid down in the three cases I have just referred to, I have come to the conclusion that I should attempt to end the litigation on this valuation and I think that if I accept the valuation made by the Council's valuers subject however to a further reduction, I shall be somewhere near the figure which might have been obtained by valuing the land in the proper way. The valuers' evidence in this appeal was that the valuers made a deduction of 33⅓% because of the zoning and position of the Golf Course. But it seems clear that the question of the town planning restrictions was not seriously considered. Rather than send the matter back for a new valuation I propose to accept the valuers' figure of $700 an acre and make a further allowance of 40% - the same allowance as made by the Australian valuer in the Rosehill case. That will bring the valuers' figure down to $420 an acre, and I therefore fix the valuation to be entered in the ratebook for the golf course at the result obtained when the acreage value of $420 is multiplied by the area of 69 acres 2 roods 17 perches.

I pass now to the clubhouse site. I bear in mind that the valuers were taken by surprise on this issue, but it is clearly wrong to value this area on the basis of comparison with other club sites in Lautoka. The witness did not give any evidence as to how he reached the figure of $4,500, and in any event there seems to be no authority for saying that a club or clubhouse site is to be valued in a special way. Its value will depend upon whether it is in a particular area, and it will be valued as if there were no improvements on it and never had been. In this case this site is in an area which is zoned as civic - public recreational open space. It will have an enhanced value because it has already been subdivided and would therefore be more attractive to a prospective purchaser, albeit that the purchaser may well be the person who would be a prospective purchaser of the larger area of the golf course. I do not accept the learned Magistrate's criticism that the clubhouse site and the golf course should be valued together or as one unit. They are under two separate titles and must therefore be valued as two separate entities, although as I have said, their value will be affected by their zoning and the only prospective purchaser may be a person who is interested in buying a golf course. The clubhouse site appears from the scheme plan produced to the Court to have a frontage to Navakubu Road, but only so as to provide an entrance. The witness gave no description of the area, and what I have said about it has to be

garnered from the scheme plan. The figure at which the value of this area must start is $420 per acre, the figure ascribed to the restricted-zoned golfcourse, with a liberal addition for an existing subdivision, but reduced owing to the small frontage. Taking those things into consideration I would make an allowance of 15%. That would bring us to $483. Then the allowance made on the golfcourse site for pylon and pipeline easements would probably have to be continued for this site, although the deductions of 15% for undulating contours and 40% to compensate for size of the golfcourse would have to be restored. That would mean that a further $231 would need to be added. That would bring the total value of the clubhouse site to $714 per acre, and the figure to be entered on the council's ratebook will be the resultant figure obtained by the multiplication of 3 roods 39.2 perches by $714 per acre. The appeal will be allowed and the Magistrate's order set aside and new valuations fixed as indicated.

These conclusions and particularly the valuation I have ascribed to the clubhouse site, may appear to impinge upon the province of the valuer. If that is so, it has been done in an effort to bring to a conclusion litigation referring to 1970 conditions. I have also endeavoured to indicate to valuers some principles to guide them on a complex subject. In view of the fact that neither valuation has been entirely accepted, there will be no order as to costs.

LAUTOKA,
8th May, 1978.

(sgd.) K.A. Stuart
JUDGE