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BETHAL HOLDINGS (PTY.) LTD. AND OTHERS v. VALUATION COURT, BETHAL AND ANOTHER.*

(TRANSVAAL PROVINCIAL DIVISION.)

1969. *June* 6, 20. HIEMSTRA, J.

Municipality.—Rates.—Valuations.—Objection by owners that valuations too high.—Valuations increased although local authority did not lodge complaint that valuations too low.—Valuation court not entitled to increase unless owners given timeous and formal notice that valuations too low.—Ord. 20 *of* 1933 (*T*), *sec.* 13 (4).—*Valuation court.—Composition of.—Undesirability of town councillors being appointed.—Sec.* 13 (1).

A valuation court cannot increase the valuations of properties in terms of section 13 (4) of Ordinance 20 of 1933 (T) without a formal objection having first been taken to the valuations as being too low.

Semble: It will protect the valuation court's reputation of impartiality if appointments of members of the local authority (town councillors) to the valuation court be avoided despite the wording of section 13 (1) of the Ordinance which permits it.

Application for the setting aside of a decision by first respondent. The facts appear from the judgment.

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H. F. Junod, for the applicants: "....."
H. P. van Dyk, for the respondents.

Cur. adv. vult.

Postea (June 20th).

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HIEMSTRA, J.: The applicants ask for the setting aside of the increase of the municipal valuation of 20 erven at Bethal by first respondent, viz. the municipal valuation court at Bethal, which sat in 1968. The city council as an interested party was cited as second respondent.

A revaluation of properties for the purpose of taxation took place in terms of the provisions of the Local Authorities Rating Ordinance, 20 of 1933.

Thereafter the valuation court sat and the present proceedings arose from irregularities which according to the applicants took place there.

Before I deal with the alleged irregularities I wish to remark on the constitution of the Court. The president of the court was the chief magistrate of Bethal, which naturally is completely in order. One member was an attorney, a partner of another attorney who acted for

* The appeal which was noted was not proceeded with.—EDS.

the objector. It would have been better had he not accepted the appointment. Four other members were members of the city council. It is strange that the Ordinance in sec. 13 (1) specifically provides that members of a local authority may also be members of a valuation court. Nobody may therefore criticise their presence there. Nevertheless I wish to express the opinion that this procedure is in conflict with one of the fundamental principles applicable to all judicial instances, whether courts of law or administrative bodies, i.e. that nobody may be a judge in his own cause. The local authority is without any doubt a party to the proceedings. It will enhance the impartiality of the valuation court in the eyes of the public if this type of appointment is avoided, notwithstanding the wording of sec. 13 (1).

The city council appointed a valuator and he prepared a new valuation roll. The values were all 150 per cent higher than on the old roll. In terms of the provisions of sec. 12 the roll was open to inspection and the three applicants who together own 20 erven lodged objections that the valuations were too high. They were all represented by the same attorney and the objections were heard by the court, together with more than two hundred other objections. To the surprise of the applicants the valuation court did not only not reduce the valuations but increased them to such an extent that there was an increase of 250 per cent instead of 150 per cent. On the 20 erven the valuation court placed an additional R54,580 over and above the already enhanced figure of the valuator.

The applicant's case is based on the submission that the valuation court was not entitled to increase the valuations without notification that an increase had been asked for or that the court had that in view. The submission was that no increase may be made without a formal objection that the valuation is too low. This is based on an interpretation of sec. 12 and sec. 13 (4) of the Ordinance. Sec. 12 provides that the valuation roll must be open to inspection, that a notice must be published and that interested parties may lodge their objections within a fixed period after publication. The last sentence of sub-sec. (1) of sec. 12 provides as follows:

"No person shall be entitled to urge any objections before the valuation court hereinafter referred to unless he shall have first lodged such notice of objection as aforesaid."

The local authority is explicitly authorised by sub-sec. (2) of sec. 12 to lodge objections in the same way and it is also expressly provided

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that a local authority has no right to raise objections before the court unless a notice has been filed. It stands to reason that objections by local authorities would normally be that the proposed valuation is too low. Sec. 13 (4) provides that the court must deal with objections which were handed in, and is entitled

"to make such alterations or amendments in the valuation roll, either by way of reduction, increase, addition or omission as to it may seem expedient; provided that no such alteration or amendment shall be made unless and until the

person appearing to be directly affected thereby shall have had at least seven days' previous written notice from the clerk of the date of the meeting of the court at which any proposal for such alteration or amendment will be considered, and such person so affected may either forward any objections thereto in writing to the president or clerk before such date . . .".

In view of the words "either by way of reduction, *increase,* addition or omission it is now submitted on behalf of first respondent that the court was entitled to increase the valuations, although the only objections filed in respect of the properties concerned, were applications for reduction. This interpretation is entirely unacceptable to me. The Ordinance provides that no action may be taken if there is no formal written objection filed within the prescribed period. The objection must obviously mention the objector's complaint, viz. whether the valuation is too high or too low or whether there is another mistake. If nobody complains that the valuation is too low the owner need not be mindful of the possibility that it may be increased and the court is not entitled to increase it without a formal objection that it is too low. The provisions of the two sections quoted by me make it clear that the person affected, must be timeously and fully informed of the objections and it follows automatically, in my opinion, that he need not prepare himself for an increase if no increase was asked for. The word "increase" in sec. 13 (4) must be understood to be qualified by words to the following effect: "if there is a formally filed objection that it is too low".

The first respondent submits that there was indeed notice of an intended increase. This is based on a passage in the record which comes to the following:

Mr. Said, the valuator, quite at the end of the proceedings said that there were a few cases in which he was going to ask for an increase. Mr. Said had no *locus standi* to have said that. He was there as a witness. He is not a party to the proceedings and there is no *lis* between him and the objectors (*Odendaalrsrus Gold, General Investments and Extensions Ltd.* v. *Claassen, N.O. and Others,* 1959 (3) S.A. 664 (A.D.) at p. 672G). Instead of informing him that he had no right to ask for increases the president allowed him to continue. As a result of this the attorney for the applicants, Mr. Feldman, said:

"Excuse me, Mr. President, at this stage I sincerely wish, I don't believe that he has the right. He has no right at this stage now to return to the goods, say that the court must now again grant an increase. (*sic*) Will the court excuse me."

Mr. Feldman left the court. Mr. Said spoke again and concluded:

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"Now I am of the opinion that the court has the power to increase a valuation, if it thinks that it is indeed out of proportion."

Thereafter the following appears:

"President: Yes the court has the right.
Mr. Said: I feel that Mr. Feldman is not here now and he cannot further the interests of his clients."

The president did not react to this and Mr. Said mentioned six properties which he wanted increased. Not one of these concerned with the present proceedings was included. Even if the court should have depended upon Mr. Said's so-called "application", Mr. Said did not make an application in respect of the properties concerned. On the contrary, after he had mentioned six Mr. Said said:

"Further there are only reductions I wish to recommend."

The most astonishing is that the president then quite correctly remarked:

"Thank you, Mr. Said, if there was an application for an increase of certain valuations, notice must be given to the persons concerned, before the court may grant it. We must first get those persons to reply. I think those are the provisions of the Ordinance, sub-sec. (4) of sec. 13."

Notwithstanding this he takes up the attitude that the applicants received such notice as they were entitled to.

Another unacceptable point of view taken up by the president in his affidavit in this case is that Mr. Feldman withdrew out of protest and that he had himself to blame if something to his prejudice happened in his absence. This is entirely unfounded. Mr. Feldman's business was completed he had already addressed the court and he was never informed that far from reducing, the court contemplated increases. He indeed, according to the record, told the court at an earlier stage that he was desirous to address the court then because he wanted to leave early. There was no protest and there was no reason to stay.

The first respondent advances a *tu quoque* argument. It is submitted that one of the properties, on the day of the sitting of the court, had already been sold at a price still higher than the court's valuation. *Mala fides* is attributed to Mr. Feldman. Mr. Feldman, however, returned from abroad the day before the sitting and he did not know of the sale. In any event this cannot have any effect on the irregularity, as it were to increase the valuation behind the back of the owner.

The first respondent also takes up the attitude that the objector should have listened to all the evidence in respect of the 250 objections and should have known that any part thereof could be used against him, although it was given in respect of other properties.

The irregularities mentioned by me are sufficient to warrant a setting aside. The question is which order should be made. On behalf of the local authority the request was made that the Court should now allow time for the filing of formal objections on which the granting of increases may be based. That would be most unfair. The local authority allowed the time prescribed by the Ordinance to lapse without filing objections. It is difficult to see on what ground it should now be allowed

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additional time. Reconsideration by the same court seems undesirable and the applicants also do not ask for it.

The order is therefore:

1. The valuations by the valuation court in respect of the properties mentioned in para. (*a*) of the notice of motion are set aside and are substituted by those which appear on the municipal valuator's valuation roll for 1968.
2. The first and second respondents are ordered to pay the costs jointly and severally, payment by one absolves the other.

Applicants' Attorneys: *MacRobert, de Villiers & Hitge*. Respondents' Attorneys: *Haasbroek & Boezaart*.

Johannesburg C.C. v. *Marine & Trade Insurance Co.*

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"In terms of Act 30 of 1941 an accident must arise out of and in the course of a workman's employment. 'In the course thereof' means that the accident must happen while the workman is engaged in his employment and it arises 'out of his employment' when the accident is connected with his employment. The Legislator did not define this connection and requires only a causal connection between the employment and the accident in the broad sense of the word. When this undefined connection is seen in the light of the object and far-reaching scope of Act 30 of 1941 it must, in my opinion, be found that the causal connection between accident and employment will generally sufficiently exist when the accident occurs at the place where the workman is in the execution of his duties. Because a workman in the execution of his duties must always be somewhere, whether he stands, walks, rides or flies, he will be injured, subject to certain exceptions, as a result of his employment and therefore out of his employment when he is injured where he is when he performs his duties. A factory labourer who is injured because a strong gust of wind throws a sheet of corrugated iron from the roof onto him and a workman who in the course of his employment walks along a street or travels in a motorcar and receives injuries as a result of the negligence of someone else, mere accident or weather conditions, still receives injuries as a result of his employment and therefore out of his employment. For the purposes of this judgment it is not necessary to try and ascertain the exceptions. It is in any event clear that this causal connection will disappear for the purposes of the Act, *inter alia,* if the accident is of such a nature that the workman would have received the injuries even if he was at a place other than the place his employment requires him to be or when a workman by his own act excludes the local *nexus* between employment and accident or when a workman is intentionally injured by another person and the motive for the assault has no connection with the employment of the workman."