PRIVY COUNCIL

Municipal Council of Sydney

Vs.

Margaret Alexandra Troy

Privy Council Appeal No. 119 of 1926
(Viscount Haldane CJ., Sumner Lords Shaw J. Merrivale and Lord Warrington of Clyffe JJ.)

20.06.1927

JUDGMENT

VISCOUNT HALDANE J.

1. This is an appeal from a judgment of the Supreme Court of New South Wales, delivered in favor of the respondent who was plaintiff in an action. The appellants were defendants and the question decided was raised by a special case.

2. Before 1924 the respondent was owner in fee simple of a piece of land in the city of Sydney. On 6th June 1924, the appellants, in accordance with the provisions of the Sydney Corporation Act, 1902, and the amending Acts, caused, for improvement purposes, a notice for the acquisition of the piece of land to be published in the Gazette and other proper newspapers and complied in all respects with the provisions necessary for the acquisition. Thereupon, by virtue of the publication of the notice, the land, under the existing statutory provision, became vested in the appellants for an estate in fee simple, and the respondent became entitled to receive compensation. Within due time from the publication the respondent served a notice of her claim to compensation. The appellants made a valuation, and the amount payable to the respondent was agreed at ?60,828. The only question that arises is as to the rate of interest properly payable under the circumstances upon the amount so ascertained as due. At one time, under the Public Works Act, 1900, providing for the acquisition of land for public works, the interest payable on the amount of compensation for land resumed there under was 6 per cent. The provisions of this Act were incorporated by reference in the Sydney Corporation Acts, the interest rate being lowered to 4 per cent. Subsequently the interest rate under the Public Works Act was similarly reduced. The

provisions as to resumption were altered in other respects in 1905 by an Act of that date, under which, in lieu of service of notice, publication in the Gazette and certain newspapers was substituted for it, and the land was to vest on the publication of the notice and description. There was another amending Act of 1916 into the provisions of which it is not necessary to enter. But in 1924 the Sydney Corporation Act of that year enacted that the 1924 Act and the 1902 Act and the Acts amending it should be construed along with the 1924 Act as the principal Act.

3. The 1924 Act as thus defined also enabled the appellants to acquire land subject to certain reservations in favor of the owner and to effect re-alignments for the purposes of widening. On these provisions, in the opinion of their Lordships, nothing turns for the purpose of the present question. The only material provision is that contained in Section 17, which is in these terms :

> Notwithstanding the provisions of any other Act the rate of interest payable upon compensation for land acquired by the Council by resumption or by the re-alignment method, or by any compulsory purchase, shall be 6 per centum per annum.

4. The Act of 1924 came into operation on 17th September in that year, and, as already stated, the acquisition (called resumption) had taken place under the existing statute on 6th June.

5. The respondent claims that on the proper construction of Section 17 of the Act of 1924 interest at 4 per cent, was payable on the agreed amount of compensation as from 6th June in that year, the date of the publication of the notice and of consequent vesting in the Corporation, upto 17th September, and thereafter at 6 per cent., notwithstanding that the Act did not become operative until 17th September, when it received the Royal Assent. The appellants contend, on the other hand, that the title to interest, at 6 per cent, under Section 17 could not arise in regard to an acquisition before the Act became operative. One reason for this contention is that the Act of 1924 for the first time enabled the "re-alignment method "to be adopted and that accordingly Section 17, which extends to interest accruing under that method, must be treated as limited to land acquired after the Royal Assent was given to the Act, inasmuch as the re-alignment method wan established by the Act for the time. The re-alignment method is thus, according to the argument for the appellants, a key to the scope of this section. But they go further and contend that even as regards ordinary acquisition or resumption there is a similar indication of intention to be found in the language of Section 17 in that the payment of interest at 6 per cent, is to be limited to

oases of acquisition or resumption after the Act of 1924 had become operative. Resumption, they argue, by means of public notification, instead of by service of notice on the owner, was first authorized by the Act of 1905. The compensation was to be ascertained under the provisions of the Public Works Act, 1900, the scheme of which for this purpose is to be incorporated with the Act of 1905. Under the Public Works Act, 1900, by Section 119(2), if compensation is payable in respect of land taken by notification in the Gazette (the then mode) it is to bear interest as from the date of this notification. As the Act of 1924 is to be read with the Act of 1905 it is argued that the word "acquired" in Section 17 of the Act of 1924 should be read as meaning acquired after that Act came into operation.

6. The learned Judges of the Supreme Court of New South Wales agreed in rejecting this contention, and held that the respondent was entitled to succeed. The main ground of their reasoning turned on the ambit and scope of Section 17.

> "It cannot be contended," said the Chief Justice, "and it is not contended, that it is retrospective in its operation so as to affect the rate at which interest was payable before it came into operation, but the question is whether the direction that interest thereafter is to be at the rate of 6 per cent, per annum applies only to subsequent acquisition of land, or applies as well to prior acquisitions, the compensation for which was still unpaid when it came into force. The words used are perfectly general. What is spoken of is the rate of interest payable upon compensation for land acquired by the Council. No distinction is made between land acquired before the Act and that acquired after, and to give effect to the contention of the Municipal Council it would be necessary to substitute for the wide and general word "acquired" some such words as "to be acquired," or "hereafter acquired " I can find nothing in the section to justify the imposition of any such limitation and there is no rule or presumption which requires that the word should be so limited in its meaning.

7. The learned Chief Justice goes on to say that it is plain that the purpose of the section was to bring up the rate of interest from one which was too low to 6 per cent, the lower rate being inadequate to the ruling rate of interest.

8. Their Lordships find themselves in full agreement with the conclusion thus expressed. In their opinion this conclusion is neither affected by the well-known rule of construction against retrospective interpretation, nor by anything to be imported from the expressions used in the earlier statutes in the series which has to be read in conjunction. Section 17 must in their opinion be read as laying down a principle

standing by itself, and to prevail, as the section declares, notwithstanding the provisions of any other Act. The new rate of interest relates to the amount of compensation for land acquired by any of the alternative methods. This provision is a substantive one which is not made to depend on any reference to corresponding provisions in the earlier statutes, and does not give rise to any question of retrospective operation.

9. On 6th June 1924, the entire title to the piece of land in question was acquired by and became vested in the appellants, who became then entitled to compensation. On 17th September 1924 the new standard rate of interest was declared to be applicable to the compensation for all land acquired. Their Lordships think that these words are unambiguous. They give a title to the higher rate of interest as from 17th September and apply subsequently to the passing of the Act which contains this fresh provision to compensation for land acquired prior thereto, notwithstanding that the Act was assented to later. Accordingly, between 6th June and 17th September the rate will remain 4 per cent, and after that is 6 per cent. They will humbly advise His Majesty that the appeal should be dismissed with costs.

Appeal dismissed.