

CANADA / JUDGMENT

Chuckry v. R.

[1973] SCR 694**COURT**

Supreme Court of Canada

DECIDED

7 May 1973

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Chuckry v. R. Collection Supreme Court Judgments Date 1973-05-07 Report

[1973] SCR 694 Judges Martland, Ronald; Judson, Wilfred; Spence, Wishart Flett; Pigeon, Louis-Philippe; Laskin, Bora On appeal from Manitoba Subjects Expropriation Decision Content Supreme Court of Canada Chuckry v. R., [1973] S.C.R. 694 Date: 1973-05-07 Stephen Chuckry Appellant; and Her Majesty The Queen in Right of the Province of Manitoba, represented by the Honourable the Minister of Public Works Respondent. 1973: January 31; 1973: May 7. Present: Martland, Judson, Spence, Pigeon and Laskin JJ. ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA Expropriation—Compensation—Accretion—Appellant's land bordering on river expropriated—Certificates of title describing owner's land as certain numbered wood lots—Accreted lands—Whether such lands property of appellant—Entitlement to compensation. The appellant, a potato farmer, was the owner of lands bordering on the Assiniboine River and described in the appellant's certificates of title as certain numbered wood lots. The said lands were expropriated by the respondent. The total compensation (\$104,000) awarded by an arbitrator was made up of market value of 132+ acres of land at \$700 per acre giving \$93,000; buildings and structures on the expropriated land—\$1,500; damages for consequential damages and injurious affection of the remainder, including disturbance of the owner and inconvenience—\$9,500. In the Court of Appeal, the three judges who heard the appeal were unanimous that it should be dismissed with the exception of one element thereof. Dickson J.A. dissented in part and would have allowed to the appellant in addition to the amount of the award, the sum of \$11,842 as compensation for either the taking or injurious affection of 59-odd acres of accreted lands. Held: The appeal should be allowed and the compensation award increased by the sum of \$22,142. The Court agreed with the Court of Appeal that the arbitrator had not proceeded on any material error in principle or misapprehension of fact and therefore would not vary the award in so far as it dealt with the lands other than the accreted lands. On the question of the accreted lands, the Court was of the opinion, as was Dickson J.A., that the said lands were the property of the appellant and that he was entitled to compensation for them either on the basis that they were expropriated or that they were injuriously affected as, in fact, the respondent had now complete possession of those 59 acres and they were covered by water. In view of the appraiser's opinion that the

cultivated, cleared and arable portion of the accreted land should have the same value per acre as that applied to similar categories of non-accreted lands, the value as found by the arbitrator was allowed for the 27 acres of cultivated, cleared and arable lands which composed part of the accreted lands; the appraiser's valuation for the balance of 32.42 acres of non-arable at \$100 per acre was then adopted making a total amount of \$22,142. APPEAL from a judgment of the Court of Appeal for Manitoba[1], dismissing an appeal from an arbitrator's award determining the amount of compensation payable to the appellant for lands expropriated by the respondent. Appeal allowed. S. Breen, Q.C., and Mrs. H. Breen, for the appellant. J.D. Raichura, for the respondent. The judgment of the Court was delivered by SPENCE J.—This is an appeal from the judgment of the Court of Appeal for Manitoba pronounced on March 1, 1972. By that judgment, the Court of Appeal dismissed an appeal from the award of His Honour Judge F.W. Newman, delivered on September 1, 1971. By that award, the said arbitrator had awarded to the appellant the total compensation of \$104,000 for lands taken, for buildings and structures on the lands taken, and for consequential damages. The total was made up of market value of 132+ acres of land at \$700 per acre giving \$93,000; buildings and structures on the expropriated land—\$1,500; damages for consequential damages and injurious affection of the remainder, including disturbance of the owner and inconvenience—\$9,500; total—\$104,000. The three judges of the Court of Appeal for Manitoba considering the appeal were unanimous that the appeal should be dismissed with the exception of one element thereof. Dickson J.A., as he then was, dissented in part and would have allowed to the appellant in addition to the amount of the award, the sum of \$11,842 as compensation for either the taking or injurious affection of 59-odd acres of land which were referred to throughout as the accreted lands. His Honour had proceeded to the arbitration under the provisions of The Expropriation Act, 1970 (Man.), c.78. The parties filed a statement of agreed facts and submission to arbitration. In para. 1 of that statement, the title of the appellant is described as Lots 85, 86, 88, 89, 90, 189, 190, 191, 192, and the north half of wood lot 87 of the Parish of Portage La Prairie in Manitoba and, in a separate title, the south half of wood lot 87 in the same Parish. Paragraph 3 of the agreed statement of facts reads: The subject property, before the taking, was an irregularly shaped parcel of land bounded on the North and West by the Assiniboine River and on the South by the East-West Road Allowance. Its easterly boundary commenced at a point on the South Road Allowance, approximately 4,910' East of the Assiniboine River from which point it extends approximately 3,240' Northerly. The respondent offered to the appellant the sum of \$85,260 as total compensation. The appellant claimed \$258,885. At the hearing he had asserted a claim to \$325,000 less the value, if any, of the land unexpropriated. At the hearing before the learned arbitrator, in the Court of Appeal, and then in this Court, much argument was presented to support what would seem to be the excessive compensation claimed by the appellant based on the excellence of the land for commercial vegetable and seed potato growing drawn from certain factors which I set out as follows: 1. Isolation.

2. Soil type.

3. The ease of irrigation.
4. Accessibility to market.
5. Availability of native labour.
6. Productivity. The learned arbitrator, in coming to the conclusion of his reasons, expressed himself as follows:
 1. The subject property possessed unique characteristics, e.g., sheltered location, size, soil qualities, water supply, isolation, ease of mechanized cultivation, accessibility to markets, that set it apart from what at first glance might seem to be comparable lands in the district.
 2. These special features gave it a special value to the owner over and above its market value.
 3. The buildings on the expropriated land were of little value, being rarely used and not occupied by the owner for his residence.
 4. Compensation for buildings and structures on land not expropriated is not properly allowable except in so far as the market value thereof may be reduced by the expropriation of the other lands. This would properly fall into the category of "Injurious Affection" as defined in Section 30(1) of the Expropriation Act, *supra*.
 5. The Application's Claim to compensation of \$8,000.00 by virtue of an alleged agreement made between the Applicant and the Water Control Branch of the Respondent, is not allowed. The evidence in support thereof was inconclusive and the damages claimed were at least in part, too remote. In point of time this claim arose after expropriation. and ended: In summary and after due consideration of the various factors and attributes involved I have concluded and find that total compensation to the Applicant in the amount of \$104,000.00, as fair, reasonable and realistic. This sum is determined as follows: Apart from the question of value to the accreted lands, the unanimous judgment of the Court of Appeal for Manitoba was expressed by Guy J.A. as follows: The learned Arbitrator clearly gave careful consideration to the evidence submitted to him and was obviously impressed by the appraisal made by Mr. Andrew Turpie. He did not follow the suggestion of the applicant that the proper approach should be an economic approach as shown by Mr. Donald I. Cook. Mr. Cook's figures as to machinery and building costs and the net return per acre for two years only (1965 and 1966) were based on a statement of income and expense produced for those years by Mr. Chuckry to the Manitoba Farmers' Union. There was nothing further to assist the Arbitrator or to bolster or support these figures, and in my view the learned Arbitrator was justified in not using them. Guy J.A. concluded: In the circumstances therefore I am not disposed to disturb the reasoning or the conclusion as to the amount of \$104,000.00 found by the learned Arbitrator, or his decision not to consider the so-called "Economic Approach". I am in agreement with the Court of Appeal for Manitoba that the learned Arbitrator had not proceeded on any material error in principle or misapprehension of fact and therefore I would not vary the award in so far as it dealt with the lands other than the accreted lands: *Winnipeg Supply & Fuel Co. Ltd. v. Metropolitan Corpn. of Greater Winnipeg*[2], at p. 338,

Saint John Harbour Bridge Authority v. J.M. Driscoll Ltd.[3] I turn next to an area of about 59 acres along the northerly limits of the various lots as shown on the plan which had been drawn in the year 1875. As I have already pointed out, para. 3 of the agreed statement of facts speaks of the subject property before the taking as an irregularly shaped parcel of land bounded on the north and west by the Assiniboine River. As Dickson J.A. pointed out in his dissenting reasons in the Court of Appeal for Manitoba: In the case at bar we are relieved of the burden of determining whether there was here present the appropriate mechanics to constitute accretion, because Crown counsel at the opening of the hearing before Newman, C.C.J. conceded that the change in the boundary of appellant's land was accreted land, formed by alluvion or gradual and imperceptible accretion. In his factum to this court, Crown counsel stated "From the outset, the Respondent has conceded that there was an accretion of land". Guy J.A. with whom Monnin J.A. concurred, was of the opinion that the appellant had not proved title to these 59 acres of accreted land relying mainly upon the provisions of s. 30 of the Manitoba Act, 1870 (Can.), c. 3, which had provided that all ungranted or waste lands in the Province of Manitoba would be vested in the Crown and upon the 1930 Statutes of both Canada and Manitoba confirming the agreement dated December 14th, 1929, whereby Dominion Crown lands were transferred to the Province of Manitoba. Guy J.A. also quoted The Extension of Boundaries of the Province of Manitoba Act, 1912 (Man.), c. 6, and The Water Rights Act, originally enacted in 1930 but now found in R.S.M. 1970, c. W80, s. 9. These two statutes, however, were enacted long after the Crown grant to the appellant's predecessor in title. With the greatest respect, I am of the opinion that Dickson J.A. has considered the question of the accreted lands and has answered all the doubts one might have to the particular lands in question and I feel I can add but little to his carefully considered reasons. I am, therefore, of the opinion, as was Dickson J.A., that the said 59 acres of accreted lands were the property of the appellant and that he is entitled to compensation for them either on the basis that they were expropriated or that they were injuriously affected as, in fact, the respondent has now complete possession of those 59 acres and they are covered by water. The appellant also argues very strenuously that the compensation for those 59 acres of accreted lands should not be limited to the sum of \$11,842 but that he should be allowed the sum of about \$58,000 as compensation for their taking or injurious affection. In fixing the amount of \$11,842, Dickson J.A. accepted the value placed upon the said accreted lands by Mr. Andrew Turpie, the appraiser called by the respondent. Mr. Turpie had dealt with the value of the accreted lands in the paragraph of his report which I quote hereafter: It was felt by this Appraiser that the cultivated, cleared and arable portion of this Accreted land would have the same value per acre as that applied to similar categories of non-accreted land and the following statement summarizes his opinion in this regard. 10.00 acres Riverdale cultivated at \$450.00 p.ac. \$4,500.00 7.00 acres Riverdale cleared at \$300.00 p.ac. 2,100.00 10.00 acres Riverdale arable at \$200.00 p.ac. 2,000.00 32.42 acres Riverdale non-arable at \$100.00 p.ac. 3,242.00 59.42 acres Total \$11,842.00 It is to be noted, however, that the learned arbitrator did not accept the valuations put by the witness Turpie but instead of granting per acreage sums varying from \$450 per acre for cultivated Riverdale down to \$30 per acre for non-arable Almassippi, he allowed a sum of \$700 per acre

for the whole 132 acres. In view of the appraiser's opinion which I have quoted above that the cultivated, cleared and arable portion of the accreted land should have the same value per acre as that applied to similar categories of non-accreted lands, I would allow the value as found by the learned arbitrator for the 27 acres of cultivated, cleared and arable Riverdale lands which composed part of the said 59 acres arriving at the amount of \$18,900 and then adopt Mr. Turpie's valuation for the balance of 32.42 acres of non-arable at \$100 per acre, i.e., \$3,242, for a total of \$22,142. In the result, I would allow the appeal and increase the compensation awarded to the appellant by the sum of \$22,142. By the provisions of the Manitoba statute, the appellant was deprived of fees upon the arbitration because of his exorbitant demands. Under such circumstances, I am of the opinion that the appellant should have his costs in the Court of Appeal for Manitoba and in this Court. Appeal allowed with costs. Solicitors for the appellant: Kushner, Breen & Gordon, Winnipeg. Solicitor for the respondent: Gordon E. Pilkey, Winnipeg.

[1] [1972] 3 W.W.R. 561, 27 D.L.R.(3d) 164.

[2] [1966] S.C.R. 336.

[3] [1968] S.C.R. 633.

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