

CANADA / JUDGMENT

Lachine v. Industrial Glass Co. Ltd.

[1978] 1 SCR 988

COURT

Supreme Court of Canada

DECIDED

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Lachine v. Industrial Glass Co. Ltd.

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Date

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Report

[1978] 1 SCR 988

Judges

Laskin, Bora; Judson, Wilfred; Spence, Wishart Flett; Pigeon, Louis-Philippe; de Grandpré, Louis-Philippe

On appeal from

Quebec

Subjects

Expropriation

Decision Content

Supreme Court of Canada

Lachine v. Industrial Glass Co. Ltd., [1978] 1 S.C.R. 988

Date: 1977-09-30

City of Lachine Appellant;

and

Industrial Glass Company Ltd. Respondent.

1976: November 2; 1977: September 30.

Present: Laskin C.J. and Judson, Spence, Pigeon and de Grandpré JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Expropriation—Acquisition of part of an unsubdivided piece of land for the construction of streets—Market value—Offsetting of increased value—Dedication—Public Streets Act, R.S.Q. 1964, c. 179—Cities and Towns Act, R.S.Q. 1964, c. 193—Civil Code, art. 407—Code of Civil Procedure (old), art. 10661—Code of Civil Procedure (new), arts. 1, 780.

In 1963, respondent was the owner of a piece of unsubdivided land of approximately 10,000,000 square feet in the industrial park of appellant municipality. Development of the land had not really begun, except that respondent had opened up an avenue 120 feet wide and 1,500 feet long. Appellant decided to acquire 1,180,329 square feet of this land for the purpose of constructing streets and proceeded to expropriate it. The roadbed was included in the expropriated area. Appellant offered a nominal indemnity of \$1 on the ground that the area expropriated had no market value. The Public Service Board dismissed appellant's contention and set the indemnity at \$622,136.32. According to the Board, art. 407 of the Civil Code and s. 608 of the Cities and Towns Act recognize the principle that a just indemnity must be paid in the event of expropriation, and the Public Streets Act in no way provides that sites to be used for streets are to be surrendered free of charge. The Board found that, in the absence of an express legislative provision (none exists in the case at bar), an indemnity must be paid in the event of expropriation, whether for public streets or for any other purpose, and that the adoption of a master plan did not absolve appellant from this obligation. The Court of Appeal concurred with the reasons and findings of the Board, but increased the indemnity payable by respondent by \$207,000. This sum represented the value of the expropriated land on the private street constructed by respondent. The Board had held that the construction of this street was a dedication, that is, an abandonment by setting aside for public use, and that consequently no indemnity was payable for this land. However, according to the Court of Appeal, a dedication is based on the express or presumed intent of the owner, and there was no evidence on file which indicated that respondent donated the land to appellant either expressly or implicitly.

Held (Pigeon and de Grandpré JJ. dissenting): The appeal should be dismissed.

Per Laskin C.J. and Judson and Spence JJ.: There is no reason to go against the unanimous reasons of the Court of Appeal.

Per Pigeon and de Grandpré JJ. dissenting: Appellant is right in maintaining that when streets are necessary for the development of a huge block of land, the area occupied by these streets has no market value. Streets are in fact necessary for the development of a very large piece of land and a reasonable amount of land must be allowed for their construction. In view of this necessity, if the only land expropriated is the land necessary for the construction of streets, then the indemnity can only be nominal. In fact, if the owner builds the streets necessary for the development of a large piece of unsubdivided land himself, the space used for this purpose has no market value for

him. There is no reason why this same space should have more than a nominal value if it is expropriated by a municipality for the same purpose. No legislative provision commands a different solution.

APPEAL against a decision of the Court of Appeal of Quebec^[1] varying the judgment of the Superior Court homologating the order of the Public Service Board. Appeal dismissed, Pigeon and de Grandpré JJ. dissenting.

Pierre Pinard, for the appellant.

M. Cinq-Mars, Q.C., for the respondent.

The judgment of Laskin C.J. and Judson and Spence JJ. was delivered by

JUDSON J.—This is an appeal from a judgment of the Court of Appeal for the Province of Quebec. The problem is one of compensation for lands expropriated by the City of Lachine from Industrial Glass Company Limited. The Public Service Board awarded \$622,136.22. The City appealed to the Court of Appeal. Its appeal was dismissed. A cross-appeal by Industrial Glass was allowed and the compensation increased by \$207,000, bringing the award up to a total of \$829,136.22.

I agree completely with the unanimous reasons of the Court of Appeal and I would dismiss this appeal with costs.

The judgment of de Grandpré and Pigeon JJ. was delivered by

DE GRANDPRÉ J. (dissenting)—For several years before the occurrence of the facts before the Court, respondent had been the owner of a large piece of unsubdivided land (approximately 10,000,000 square feet) in the industrial park of appellant municipality, south of Côte de Liesse Boulevard. In 1963, appellant decided to acquire 1,180,329 square feet of this land for the purpose of constructing streets and proceeded to expropriate it, offering a nominal indemnity of \$1 on the ground that, in the circumstances, the area expropriated had no market value. The Public Service Board and the Court of Appeal were of a different opinion and set the indemnity at \$622,136.32 and \$829,136.22 respectively.

This question of the market value of the expropriated land is the first question raised by this appeal. If it is decided in favour of respondent, other questions will have to be examined including the following:

- (1) the offsetting of increased value against the expropriation indemnity, art. 1066l of the old Code of Civil Procedure and art. 780 of the new Code;
- (2) the principle of abandonment by setting aside for public use (dedication).

A brief review of the facts and proceedings involved would be useful:

- (1) respondent has never had any intention of selling any part whatever of its land; its development policy called for renting individual lots, the size of which would depend on the customer's needs;
- (2) at the time of the expropriation, development of respondent's land had not really begun, except that respondent had opened up an avenue 120 feet wide and 1,500 feet long, the roadbed of which was included in the expropriated area (part of 32nd Avenue), and a building for renting had been constructed at the southwest corner of this avenue and Côte de Liesse;
- (3) the expropriation followed the adoption of a master plan for the industrial sector of the City, on which was indicated the location of all proposed streets (by-law No. 1587, adopted on July 23, 1962, confirmed by the Superior Court on September 13, 1962, and registered on October 31 following);
- (4) a notice of expropriation was served upon respondent on April 24, 1963; prior possession was granted to appellant by the Superior Court on June 6, 1963, and the same date the case was referred to the Board for determination of the indemnity;
- (5) the case was heard on June 17, 1970 and reopened on June 7, 1971; the order of the Board is dated June 25, 1971, and was homologated by the Superior Court on August 2 of the same year.

The Board dismissed the City's contention for reasons that I think may be summarized as follows:

- (1) art. 407 of the Civil Code requires payment of a just indemnity in the event of expropriation;
- (2) s. 608 of the Cities and Towns Act (R.S.Q. 1941, c. 233, now R.S.Q. 1964, c. 193) explicitly recognizes the principle that an indemnity must be paid to the expropriated party;
- (3) the Public Streets Act (R.S.Q. 1941, c. 242, now R.S.Q. 1964, c. 179) in no way provides that sites to be used for streets are to be surrendered free of charge by their owners;
- (4) this rule that an indemnity must be paid in the event of expropriation, whether for public streets or for any other purpose, must be followed in the absence of an express legislative provision such as, for example, art. 610A of the Charter of the City of Montreal,
- (5) no such provision exists in favour of the City involved in the case at bar; the adoption of a master plan adds nothing to the rights of the City.

The Court of Appeal concurred in the reasons and findings of the Board:

[TRANSLATION] The Board properly dismissed this first contention of appellant, which seeks, in short, by adopting a plan, to establish a right to expropriate without indemnity the land necessary for the construction of streets and installation of water and sewage services.

Appellant clearly is not asking this Court to discard the general principle of art. 407 C.C. that, in the event of expropriation, the owner is entitled to “a just indemnity previously paid”. Neither does it contend that a municipality is exempted from paying an indemnity simply because the purpose of the expropriation is the construction of streets.

What appellant does vigorously maintain is that when streets are necessary for the development of a huge block of land, the area occupied by these streets has no market value. It emphasizes that in this case the value per square foot of the lots serviced by the roads necessary for the harmonious development of the whole site is greater than the value per square foot of the original block of land without any streets. The expropriation would therefore cause no loss to the owner, who left to itself would have had to set aside this area or an equivalent area for roads in order to increase the value of its investment. The City is therefore asking us to set aside the judgment of the Court of Appeal, which expressed its finding on this point as follows:

[TRANSLATION] ...in granting to cities and towns the power of adopting a plan pursuant to the provisions of s. 431 of the Cities and Towns Act, the legislator did not intend to depart from the general principle of the right of the expropriated party to a just indemnity previously paid.

The starting point of the City’s contention is that streets are necessary for the development of a very large piece of land. This general statement is supported by the evidence. Thus the expert witness Paquette, retained by respondent, acknowledged that someone buying the whole piece of land would pay more for it after it had been subdivided and provided with streets than he would before this was done. He noted that the expropriated party must, realistically, expect to sustain a reasonable amount of loss in developing such a property. Valiquette, the expert witness retained by the City, stated the same principle and added that the presence of streets would increase the value of the land by approximately \$2,000,000.

Two decisions of this Court are relevant because they have accepted the validity of this approach. In *City of Ste-Foy v. La Société Immobilière Enic Inc.*[2], the Board had found that the most effective commercial use of the land was subdivision into residential lots, and fixed the proportion that would be required for streets at twenty-seven per cent. Abbott J., speaking for the Court, wrote (at p. 127):

[TRANSLATION] The compensation set by the Board is based on the principle that for each square foot of expropriated land, valued at sixty-five cents per square foot when it was sold as a building lot, the following deductions must be made:

- (1) twenty-seven per cent per square foot for the value of the land used as streets, and
- (2) thirty-three per cent per square foot for the cost of subdivision, sale, and so on.

This leaves a net value of twenty-six cents (forty per cent of sixty-five cents): I can see no objection in law to this method of arriving at the value of the entire property before subdivision.

Furthermore, on May 16, 1973, in *City of Saint-Laurent v. Golcap Investment Ltd. et al.*[3], Fauteux C.J., speaking for this Court, affirmed on the bench a decision of the Court of Appeal that, for an industrial development, a deduction of ten per cent for streets was preferable to the twenty-five per cent accepted by the Board. It may be noted that in the case at bar the land expropriated for streets amounted to 11.8 percent of the land belonging to respondent.

On the basis of the evidence and of these two decisions, the City submits that the following principle is beyond question: when determining the value of a block of land, the necessity of setting aside for streets a certain proportion of the total area which varies according to whether the land is for industrial or residential use, must be taken into consideration. Appellant adds a second proposition: if the only land that is expropriated is the land necessary for the construction of streets, then the indemnity can only be nominal since this land has no market value. Respondent willingly subscribes to the first proposition but, needless to say, rejects the second. This is clearly the crux of the dispute.

This second proposition has already been submitted to the Court of Appeal in another case, but that Court did not have to resolve the question. In *Narbo Investment Corporation v. City of Saint-Léonard*[4], the municipality has also offered a nominal value of \$1. Kaufman J.A., speaking for the majority, merely wrote about the indemnity: “Perhaps it did not exceed the amount offered”, and referred the case back to the Board.

At least a partial answer to the question raised by the second proposition has, however, been given in two decisions of this Court. In the first of these, *City of Montreal v. J.A. Maucotel et al.*[5], the City had converted a lane belonging to respondents’ predecessors into a street. This lane, which was twenty feet wide and seven hundred feet long, had been assigned a value of \$7,000 by the Court of Appeal. Rinfret J., as he then was, speaking for the Court, noted that this indemnity [TRANSLATION] “appears to have been calculated on the basis of an erroneous principle” (at p. 391), and added (at p. 393):

[TRANSLATION] Moreover, the value of the lane is presumed to have been included in the price of the lots it served and it is therefore assumed that respondents or their predecessor in title have already been reimbursed for it.

He further added (at p. 394):

[TRANSLATION] There was thus only one possible buyer, the City of Montreal, which could have only one purpose: to use the lane as a public street. This situation ruled out any competition and therefore any market. After noting that [TRANSLATION] “what respondents lose by the transformation of their lane into a public street may be insignificant from a monetary point of view” (at p. 395), Rinfret J. ordered that the case be returned to the Superior Court for determination of the amount of the indemnity, unless the City preferred to pay the amount fixed by the Court of Appeal.

In the other case, *David v. City of Jacques-Cartier*[6], Fauteaux J., as he then was, wrote on behalf of the Court (at p. 800):

[TRANSLATION] In *City of Montreal v. Maucotel*, [1928] S.C.R. 384, this Court, composed of Duff, Mignault, Newcombe, Rinfret and Smith JJ., stated that in order to make a profit a person subdividing a property must of necessity include in the price of the lots the value of the streets and lanes that he sets aside and abandons for the use of these lots. It was held that the person making such a subdivision is consequently presumed to have done so.

These decisions illustrate that the attempt to determine the “just” indemnity mentioned in art. 407 C.C. may result in the conclusion that in certain cases this indemnity is only nominal. This is an application of the classic principle that the indemnity should represent the value to the owner at the time of expropriation (*Cedar Rapids Manufacturing & Power Company v. Lacoste*[7]). An owner who wishes to develop a large piece of land that has not been subdivided cannot do so without sacrificing to this objective the square footage necessary for streets. If he builds the streets himself, the space used for this purpose has no market value for him. I fail to see why this same space should have more than a nominal value if it is expropriated by the municipality for the same purpose.

No legislative provision appears to me to command a different solution. Article 1066l of the Code of Civil Procedure merely imposes an obligation to determine the indemnity in accordance with the value of the immovable; it in no way imposes an obligation to automatically pay more than a nominal indemnity for land to be used for building streets. Neither the Cities and Towns Act nor the Public Streets Act contains any other statement.

This conclusion seems unavoidable to me quite apart from para. 8 of s. 429 of the Cities and Towns Act (1959-60, c. 76), which gives municipalities the right to adopt a master plan; however, the second and third subparagraphs of this paragraph certainly confirm me in the above opinion since they give full power to the municipality:

To regulate the laying out of the public or private streets and the lanes or public places upon lands which the owners are subdividing into building lots; to prohibit such subdivisions and laying out of streets as well as lanes or public places which do not coincide with the master plan of the municipality and to compel the owners of private streets and lanes to indicate, in the manner stipulated by the council, that the same are private;

To prescribe, according to the topography of the ground and the use for which they are intended, the manner of laying out public or private streets and lanes, the distance to be left between them and their width if it is to exceed sixty-six feet English measure;

It is therefore my opinion that at least for the minimum width of sixty-six feet prescribed in the relevant legislation, respondent is entitled only to the nominal indemnity of \$1 offered by the City.

Two of the streets specified by the master plan, (32nd Street, the main artery of the area, and street C) are, however, 120 feet wide and the expropriation stipulates this width. Can the municipality acquire the area necessary for the opening of two streets whose width is fifty-four feet greater than the minimum roadbed without paying any real indemnity? This question was

not considered in the context of the case at bar by either the Board or the Court of Appeal for the obvious reason that both of these jurisdictions assigned a market value to each square foot of the roadbed. In my view, respondent is not entitled to any indemnity for this additional width. The rule of sixty-six feet is a minimum rule, as is apparent from ss. 5, 6 and 7 (now ss. 4, 5, 6 and 7) of the Public Streets Act. Section 6 (now s. 5) in particular states:

Any person, corporation, company or partnership which divides its lands into building-lots shall, for the roads and streets it marks out on the land, allow a width of at least sixty-six feet, English measure.

The third subparagraph of s. 429(8) of the Cities and Towns Act cited above expresses the same idea regarding streets. This subparagraph establishes the criteria that are to guide the municipality in determining the width: namely, “the topography of the ground and the use for which they (the streets) are intended”. In the case at bar this topography and use were taken into consideration by respondent itself since, before the master plan was adopted, it opened up a boulevard 120 feet wide and 1,500 feet long, following the route of what is now 32nd Avenue. Moreover, the criterion of the use for which streets are intended obliges us to consider another factor, namely the proportion between the area occupied by the streets and the total area of the piece of land, which as we have seen is 11.8 per cent in the case at bar. Since this Court has already found a proportion of 10 per cent reasonable for an industrial development (*City of Saint-Laurent v. Golcap*, *supra*), it appears to me that the City’s decision to make the two proposed streets 120 feet wide cannot be impugned. For all of these reasons no additional indemnity is owing simply because the streets were fifty-four feet wider than the minimum width.

In view of this conclusion regarding the first question, there is no need for me to consider the other questions raised by this appeal. Respondent is therefore entitled to an indemnity of \$1, which should be added to the \$48,128.57 spent by respondent on improvements to 32nd Avenue before the expropriation. This cost has not been disputed by the City.

For these reasons I would allow the appeal, set aside the judgment a quo, vary the judgment of the Superior Court homologating the order of the Board and set the indemnity at \$48,129.57, affirm the trial judgment regarding costs, including the cost of expert opinion and any interest, and order respondent to pay costs both in the Court of Appeal and in this Court. Appeal dismissed with costs, PIGEON and DE GRANDPRÉ JJ. dissenting.

Solicitors for the appellant: Viau, Bélanger, Mailloux, Beauregard, Paquet & Pinard, Montréal.

Solicitors for the respondent: Martineau, Walker, Allison, Beaulieu, MacKell & Clermont, Montreal.

[1] [1977] R.P. 313.

[2] [1967] S.C.R. 121.

[3] [1973] S.C.R. vi.

[4] [1975] C.A. 595 (summarized).

[5] [1928] S.C.R. 384.

[6] [1959] S.C.R. 797.

[7] [1914] A.C. 569.

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