No. 902-3
The Court of Appeals of Washington, Division Three

Schreiber v. Riemcke

11 Wn. App. 873 (Wash. Ct. App. 1974) · 11 Wash. App. 873 · 526 P.2d 904
Decided Sep 24, 1974

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[1] Administrative Law and Procedure — Judicial Review — Exhaustion of Administrative Remedies. A court may review an administrative determination without first requiring exhaustion of available administrative remedies when such review presents a purely legal question which is beyond the agency's authority or expertise to resolve and additional administrative proceedings would be of no use.

[2] Taxation — Levy and Assessment — Cyclical Revaluation — Revaluation Outside 4-year Cycle. A county may reappraise and revalue real property outside of its normal 4-year cycle when it has made a bona fide mistake in its previous valuation and the new assessment is neither arbitrary nor capricious, and does not violate equal protection rights or the uniformity of taxation clause of Const. art. 7, § 1 (amendment 14). [See 72 Am.Jur.2d, State and Local Taxation § 831.]

[3] Constitutional Law — Equal Protection — Impairment — Errors of Judgment. Equal protection rights are not impaired by mere errors of judgment by government officials.

[4] Officers — Official Acts — Presumptions. Public officers are presumed to have performed their official acts in good faith, absent evidence to the contrary.

Appeal from a judgment of the Superior Court for Yakima County, No. 55667, Ross R. Rakow, J., entered June 15, 1973.

Velikanje, Moore, Countryman Shore and *Warren L. Dewar, Jr.,* for appellant.

Jon R. Harlan, Prosecuting Attorney, and *Thomas M. Rasmussen, Deputy,* for respondents.

Reversed and remanded.

Action to review a valuation of real property and to recover taxes paid. The plaintiff appeals from a summary judgment in favor of the defendants.

McINTURFF, J.

Plaintiff appeals from the trial court's order granting defendants' motion for summary judgment and dismissal, and order denying plaintiff's motion for summary judgment. Plaintiff sought to have the court nullify *874 an increased valuation of his property, to recover real estate taxes paid under protest, and to enjoin any future increased assessment until completion of a systematic revaluation of other taxable real property in Yakima County.

Plaintiff is the owner of real property in Yakima County known as Wards Plaza Shopping Center, under lease to Montgomery Ward Corporation, with 21 1/2 years remaining on the 30-year lease. In April 1971, the appraised value of the property based on the 4-year systematic statutory revaluation was raised to $1,423,800 for the taxable year 1972. A hearing was held on

plaintiff's appeal to the Yakima County Board of Equalization (hereafter referred to as the Equalization Board) on September 21, 1971, from which the Equalization Board entered an order reducing the appraised valuation to $780,000. Defendants assert by affidavit of the chief appraiser for the Yakima County assessor's office, Alton Olson, that they concurred in the reduced valuation only because they were led to believe by plaintiff's counsel that the increase in valuation under the law should properly be assessed to lessee Montgomery Ward Corporation, which defendants later determined to be error. Defendants did not appeal from the Equalization Board's order reducing the assessed valuation.

On January 1, 1972, approximately 3 1/2 months after the hearing before the Equalization Board, defendants reappraised plaintiff's property at $1,423,800 for the taxable year 1973. Plaintiff again appealed to the Equalization Board which reduced the assessed value to $1,114,800. Plaintiff appealed to Superior Court, where the court granted defendants' motion for summary judgment from which this appeal is taken.

[1] A preliminary question to be resolved is whether this case is properly before this court. The general rule is that when an adequate administrative remedy is provided, it must be exhausted before the courts may intervene. *Wright v. Woodard,* 83 Wn.2d 378, 518 P.2d 718 (1974). This doctrine is particularly appropriate where the questions involve matters within the expertise of
875 the agency, *875 *e.g., Wright v. Woodard, supra* (classification of property); *Stimson Timber Co. v. Mason County,* 112 Wn. 603, 192 P. 994 (1920) (overassessment of property). But where the questions raised are purely legal and beyond the authority and expertise of an administrative agency to resolve, and it appears that further administrative proceedings would be ineffective or useless, the court may relax its requirement of exhaustion of administrative remedies. *Hillsborough v. Cromwell,* 326 U.S. 620, 625, 90 L.Ed. 358, 66 S.Ct. 445 (1946); B. McAllister, *Taxpayers' Remedies — Washington Property Taxes,* 13 WASH. L. Rev. 91, 128 (1938); *accord, Louisville Jefferson County Planning Zoning Comm'n v. Stoker,* 259 S.W.2d 443 (Ky. App. 1953); *Levitt Sons, Inc. v. Division Against Discrimination,* 31 N.J. 514, 158 A.2d 177 (1960); *Walker Bank Trust Co. v. Taylor,* 15 Utah 2d 234, 390 P.2d 592 (1964); *see generally In re Buffelen Lumber Mfg. Co.,* 32 Wn.2d 205, 209, 201 P.2d 194 (1948). *See* discussion in 3 K. Davis, *Administrative Law Treatise* § 20.09 (1958).

The issues raised on this appeal question the constitutionality of the acts of the county assessor in reappraising property outside of the normal 4-year systematic cyclical program. As this issue could not be resolved by the Board of Tax Appeals, it would be useless to entertain further administrative proceedings. Hence, this case may properly be heard in the courts.

[2] The crux of this case is whether a county assessor may reappraise property outside of the normal 4-year systematic cyclical program for revaluation. Our answer is yes, *provided,* that there has been a bona fide mistake made in the prior revaluation, and that the resulting assessment is neither arbitrary, capricious, nor violative of the equal protection clauses of our federal and state constitutions, and the uniformity clause of our state constitution.

Initially, we must consider the following statutes.
876 RCW 84.40.020 provides in pertinent part: *876

> All real property in this state subject to taxation shall be listed and assessed every year, . . .

RCW 84.41.030 provides:

> Each county assessor shall maintain an active and systematic program of revaluation on a continuous basis, and shall establish a revaluation schedule which will result in revaluation of all taxable real property within the county *at least* once each four years.

(Italics ours.)

The clear import of these statutes is to require the assessment of property *at least* every 4 years to insure uniformity in taxation. The broad purpose of general revaluation throughout the state is to establish "standards of fairness and uniformity." RCW 84.41.010.

The plaintiff argues that a revaluation by the assessor, "out of cycle," was precluded because of the defendants' failure to appeal to the tax commission the Equalization Board's determination of value in 1971. RCW 84.08.130. The merits of this issue can be resolved without determining whether the failure of the assessor to employ the appeal procedure permanently barred a subsequent revaluation within the cyclical period.

The plaintiff cites *Dore v. Kinnear,* 79 Wn.2d 755, 489 P.2d 898 (1971), and *Carkonen v. Williams,* 76 Wn.2d 617, 458 P.2d 280 (1969), for the contention that a departure from the 4-year revaluation schedule violates the equal protection clauses of our state and federal constitutions and the uniformity clause of our state constitution.

In *Carkonen* the court held the 4-year cyclical revaluation program within each county did not violate constitutional provisions relating to uniformity and equal protection. The court said at page 633:

> [S]tate courts which have considered cyclical revaluation programs have generally found them to be compatible with constitutional equal protection and uniformity provisions, provided they be carried out systematically and without intentional discrimination.

Later, in *Dore,* the court, in attempting to meet the
877 requirements *877 of RCW 84.41.030, held that the failure to revalue a substantially equal amount of taxable property each year of a 4-year cyclical revaluation program violated the uniformity requirement of article 7, section 1 (amendment 14) of the state constitution, and the equal protection requirements of the state and federal constitutions. The court stated:

> Thus, where a cyclical program of revaluation is undertaken, a systematic and consistent program of revaluation must be maintained during each year of the cyclical period in a county. This would require that substantially an equal amount of taxable property in a county be revalued in each year of the cyclical program in order that all taxpayers receive the same treatment within the cyclical period to avoid derogation of the equal protection clauses of our federal and state constitutions and the uniformity of taxation clauses of our state constitution.

Dore v. Kinnear, supra at 763. However, *Dore* and *Carkonen* do not decide whether a reassessment can be made outside the cyclical program if a bona fide mistake has been made in a prior assessment. Uniformity is the keystone of taxation. The reappraisal in this case did not result in the kind of discriminatory taxation found in *Dore*; rather, it attempted to achieve the goal of uniformity being sought by the assessors in *Carkonen.* **[3]** It could be contended that reappraisal to correct a mistake would be discriminatory because it would be outside the cyclical program. This contention is answered in the negative. In *Sunday Lake Iron Co. v. Wakefield,* 247 U.S. 350, 352, 62 L.Ed. 1154, 38 S.Ct. 495 (1918), the United States Supreme Court stated:

> The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, . . . It is also clear that *mere errors of judgment* by officials will not support a claim of discrimination.

(Italics ours.)

Additional authority allowing the correction of
878 mistakes *878 made in property valuations is found in *Lewis v. Bishop,* 19 Wn. 312, 319, 53 P. 165 (1898). The court, in construing the substantially similar predecessor to RCW 84.48.010 (First),[1] concluded that "[this] statute affords ample provision for the correction of any mistakes that may have occurred, and makes it possible that plaintiff's property shall be charged with its just burden of taxation."

[1] RCW 84.48.010 provides:

"First. [The Board of Equalization] shall raise the valuation of each tract or lot or item of real property which in their opinion is returned below its true and fair value to such price or sum as they believe to be the true and fair value thereof, after at least five days' notice shall have been given in writing to the owner or agent."

We therefore hold that the defendants may reappraise property outside the 4-year systematic cyclical program if there has been a bona fide mistake made in the prior assessment. The assessment in 1972 is not retroactive to the prior year. *See British Columbia Breweries (1918) Ltd. v. King County,* 17 Wn.2d 437, 135 P.2d 870 (1943).

[4] Plaintiff also contends that there was no reappraisal of the property in January 1972, upon which the assessor could adequately base his revaluation. We disagree. There is substantial evidence to the contrary. The findings of the Equalization Board, dated July 1971, state that the property was inspected by the appraiser. Charles Riemcke, Yakima County Assessor, further stated that the property was reappraised in January 1972. In the absence of evidence to the contrary, the presumption of the law is that government officials properly perform their duties in good faith. *Rosso v. State Personnel Bd.,* 68 Wn.2d 16, 411 P.2d 138 (1966).

Plaintiff finally argues there is no evidence that the Equalization Board's act of lowering the appraiser's revaluation in 1971 to $780,000 was based upon a consideration of the lessee's interest being assessed. We do not agree. The findings of the Equalization Board indicate that the "poor lease" was taken into consideration in arriving at this assessed valuation. The findings of the Equalization Board dated July 1971 state that the
879 assessed valuation of *879 $1,423,800 was reduced to $780,000 "because of a poor lease something like 30 years at $1 a foot."

Since there was no determination by the trial court that the assessor had made a bona fide error in arriving at the assessed value of the property in 1971, and that the subsequent revaluation was neither arbitrary, capricious or intentionally discriminatory in nature, a material issue of fact remains unresolved. The granting of the motion for summary judgment was therefore improper.

The judgment of the trial court is reversed and the matter is remanded to the trial court for a hearing consistent with this opinion. Each party shall bear its own costs.

GREEN, C.J., and MUNSON, J., concur.