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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

J. AGNEW ROVANE, et al,)
Appellees,)
v.)
CLAUDE ELTING, el al,)
Appellants.)

Filed May 20, 1977

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2-57948

Appeal from Lee District Court - J. R. Leary, Judge.

Appeal from summary judgment granted by trial court concerning valuations set by city assessor and revaluations by the board of review in Keokuk, Iowa, as a result of a four square mile annexation. Reversed and remanded.

Norman, Younggren & Webber, of Keokuk, Thomas C. Younggren, for appellants.

Smith, Dickey & Smith, of Keokuk, Robert B. Dickey, for appellees.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

CARTER, J.

This is an appeal from an order sustaining a motion for summary judgment on behalf of the plaintiffs and the resulting decree which voided the reassessment of certain residential properties made by the city assessor for the City of Keokuk. The appellants urge that there were genuine issues of material fact which precluded the granting of such relief and further urge on this appeal (as they had in the trial court) that this action challenging the acts of the assessor has become moot as a result of actions taken by the board of review of the City of Keokuk subsequent to the filing thereof.

We agree that based upon the stipulation of the parties filed on July 14, 1974, the action had become moot prior to the time the trial court sustained the motion for summary judgment. Paragraph 11 of the stipulation recites:

> "The Board of Review did review each valuation of residential property and in most, but not all, cases reduced the valuation to a figure below that placed on the property by the City Assessor as a result of the revaluation."

The record reflects that some of the valuations involved in the present action were brought before the board of review by taxpayer protests pursuant to section 441.37, The Code; the others on the board's own motion pursuant to section 441.35(1), The Code. The action taken by the board of review in each instance was clearly within its statutory authority.

All of plaintiffs' complaints may be lumped into two general catagories; (1) that an improper method of assessment was used which ignored the willing buyer - willing seller approach, and (2) that the assessment of plaintiffs' properties was inequitable as compared with the valuations placed upon other properties in the original city. As to the first catagory of objection, numerous cases recognize that this is properly raised by protests to the

board of review with a right to the de novo judicial review which follows such proceedings. Valley Forge Apartments v. Board of Review, 239 N.W.2d 148 (Iowa 1976); Maytag Co. v. Partridge, 210 N.W.2d 584 (Iowa 1973); Tiffany v. Board of Review, 188 N.W.2d 343 (Iowa 1971). With respect to the claim that the assessment is inequitable as compared with other like properties, this is specifically included within the statutory grounds for protests to the board of review. *See* § 441.37(1), The Code. Since the action does involve matters cognizable by the board of review it is doubtful whether the court in this action has subject matter jurisdiction of plaintiffs' claims under the holding of Griswold Land Co. v. Calhoun County, 198 Iowa 1240, 201 N.W. 11 (1924). We need not determine this point in view of the disposition which we make of the case.

We believe that whether the assessments were raised, lowered or left unchanged, the actions of the board of review supersede those of the assessor for purposes of the official tax levy. *See* Talley v. Brown, 146 Iowa 360, 125 N.W. 248 (1910). The board of review is an independent body whose actions can only be challenged by appeal to the district court under authorized statutory procedure. §§ 441.35, 441.38, The Code. This action is not such an appeal and as indicated was commenced prior to the action taken by the board of review.

The board of review has all of the rights of a formal party in a proceeding challenging its official actions. It is not the alter ego of the assessor or the city. Here the only defendants are the City of Keokuk and its city assessor. The relief requested in the petition is only that the acts of the assessor, pursuant to the reevaluation of plaintiffs' properties, be enjoined and

the previous assessed valuations be reinstated.[1] No effort was made to enjoin action of the board of review while this suit was pending. The court can not in the present action against the assessor and the city act to change the official action of the board of review from which no appeal was taken. The board's act having superseded that of the assessor with respect to taxation of plaintiffs' real estate this action is in fact moot. Nitta v. Kuda, 249 Iowa 853, 857, 858, 89 N.W.2d 149 (1958).

We remand the action to the trial court with directions to enter an order vacating the trial court's summary judgment and decree and dismissing plaintiffs' action as moot.

All judges concur except DONIELSON, J., who dissents.

1 An alternative prayer for declaratory judgment as to the powers of the board of review to grant the relief which plaintiffs seek was not involved in the trial court's ruling on the motion for summary judgment or the decree which followed it. Plaintiffs do not refer to this matter on appeal and in view of the actions of the board of review the issue is moot.

DONIELSON, J. (dissenting)

My dissent is founded upon the belief that the majority does not give adequate consideration to the stipulations filed by the parties. The first regarding jurisdiction dated April 16, 1974:

> It is stipulated by and between the plaintiffs and the defendants, through their respective counsel, that subject to the Court's approval:
>
> 1. The plaintiffs have as a matter of law the right to maintain this action as a class action in the manner stated in their petition.
> 2. That the Court has the power to lawfully determine whether or not the assessor's action in reassessing the property in the annexation area as alleged in the petition was in fact lawful based upon the grounds alleged in paragraph Twelve and the sub-paragraph thereof of the plaintiffs' petition and award the plaintiffs such relief as the Court sees fit or determines advisable.
> 3. The defendants having entered their appearance in this cause shall now proceed to file pleadings in accordance with the Rules of Civil Procedure and with the understanding that the date of the filing of the appearance shall constitute the appearance date for the purpose of filing pleadings.
> 4. The above stipulation was entered into in open court and agreed to by the attorney for the plaintiffs and the attorney for the defendants, with the approval of the Court and signatures to said stipulation are hereby waived.

This decision then results in what I consider to be wrong in two aspects. The plaintiff effectively end up with "no day in court", and some pursuant to the second stipulation received no hearings at all either before the Board of Review or in the courts.

My second reason is founded upon the belief that I do not envision the Board of Review to be an original assessing body of these four square miles annexed to the City of Keokuk. Indeed the name of the commission itself, 441.31 Board of Review, and 441.35 Powers of Review Board. See also 441.35 which uses the terminology *"to equalize assessments"*; and 441.37, Protest of Assessment-Grounds, which are based upon the assumption that they are reviewing previously made, valid and effective assessments.

If there was no valid assessment by the City of Keokuk, the Board of Review then assumed the role of the original assessor and not as a reviewing body as intended. Again, I do not believe that the majority has given adequate weight to the second stipulation filed July 14, 1974:

> Come now the Plaintiffs and the Defendants in the above entitled lawsuit and for the purpose of reaching an accord on certain facts to support Motions filed by the respective parties herein, stipulate and agree to the following facts:
>
> 1. That the Plaintiffs, prior to said annexation, were within the Jackson Township Taxation District of Lee County, Iowa and that their land had been re-assessed in 1971 by the Assessor of Lee County, Iowa in accordance with the procedures set forth in Section 428.4 of the Code of Iowa.
> 2. That the real property in the original City of Keokuk had been similarly re-assessed in the year 1971 by the Assessor of the City of Keokuk.
> 3. That following said annexation the annexed properties were treated by the Defendant Assessor as part of the City of Keokuk for the 1973 tax year and millages for producing tax revenue for the City of Keokuk duly applied to the property valuations as they existed at the time of annexation.
> 4. That in late 1973 the Defendant Assessor employed an appraisal firm known as Vanguard to personally inspect, through its representatives, all residential properties within the annexed area. The purpose of such inspection was to re-value said residential properties within the annexed area for purposes of real estate taxation. Vanguard representatives produced new valuations on said properties by reference to a manual promulgated by the Iowa State Tax Commission through the use of which values were arrived at by reference to such items as the size of the structure, the type and nature of its construction, to probable construction costs, amenities and attributes thereof, and, further, taking into account obsolescence and depreciation, as well as other items. Vanguard did not attempt, in making such re-valuations, to relate the same to market values of comparable properties obtaining within the City of Keokuk, nor did it attempt to directly relate such re-valuations to comparable valuations for purposes of real estate taxation then obtaining within the old City.
> 5. That following the Vanguard re-valuation residents of the annexed area were given an opportunity to meet with Vanguard representatives, and

in some instances Vanguard valuations were reduced.

6. Thereafter said Vanguard valuations were entered upon the records of the Defendant Assessor and the residents of the annexed area notified in accordance with law of the increases in their valuations so arrived at.

7. Virtually every residential property within the annexed area had its valutaion increased and it is estimated that said valuations on average were increased by virtue of the Vanguard appraisals as adjusted and entered upon the Defendant Assessor's records by from 50% to 75% of their valuations obtaining at the time of annexation.

8. No comparable re-valuation procedure was undertaken by the Defendant Assessor with regard to the residential property in the old city and those valuations at this time remain as they were arrived at in 1971, subject to some selective adjustments made due to remodeling, demolition or other causes.

9. That thereupon, and prior to the meeting of the Board of Review of the City of Keokuk Plaintiffs filed this action and thereafter some of the Plaintiffs filed individual appeals with said Board of Review. Many other persons, although allegedly members of the class, residing within the annexed area did not file individual appeals with the Board of Review.

10. That the Plaintiffs also filed with the Board of Review a purported class protest substantially embodying the same allegations as those contained in the Petition. The Board of Review dismissed this purported class protest as not being entertainable by them as a matter of law.

11. The Board of Review did review each valuation of residential property and in most, but not all, cases reduced the valuation to a figure below that placed on the property by the City Assessor as a result of the revaluation.

12. That the Board of Review did not make revaluation of residential property within the old city except in some instances where there had been an individual appeal.

13. The parties agree that the revaluation in the annexed area initially entered upon the records of the Keokuk City Assessor were higher than on comparable properties within the old city.

I do not envision the Board of Review having any jurisdiction, until there is a valid assessment or a quasi valid procedure under these facts.

Here the Stipulation #2, paragraph 4, specifically indicates that the properties were assessed by a manual promulgated by the Iowa State Tax Commission and in making the

revaluations, they did not relate those criteria to market values of comparable properties within the City of Keokuk, nor relate such revaluations to comparable valuations for the purpose of real estate taxation within the City of Keokuk. They did not meet the criteria in 441.21 of the willing buyer-willing seller test. This aspect should be pursued further by a factual hearing. See Tiffany v. County Board of Review In and For Greene County, 188 N.W.2d 343 (Iowa 1971).

I would reverse the granting of the motion for summary judgment and would require a hearing to determine whether the Iowa State Tax Commission manual, as used by Vanguard, did indeed correspond to the willing buyer-willing seller criteria under 441.21. It may well have been so, but we do not know these facts.

Reason would seem to indicate, that market values of the willing buyer-willing seller would be difficult to implement. There is a likelihood that manuals, such as those here involved, setting forth some standards are in general use. If they are, they must relate to the criteria in 441.21 and this the trial court should determine by a hearing.

The majority uses a highly technical interpretation which does an injustice to the parties for it is literally impossible for them to figure out which was the proper way to proceed, accordingly, they are now "out in the cold" so to speak. Indeed the lawyers and the trial court were satisfied under Stipulation #1 as to jurisdiction and the proper procedural aspects. The plaintiffs are without fault procedurally.

I am not in accord with this highly technical

interpretation of procedural law. Even though the Board of Review did review the valuations of the residential properties, and reduced some of them, this is irrelevant. The Board had no authority (under this limited fact situation) to review anything until such time as determined by the court, whether the Keokuk City Assessor proceeded with these new valuations in either a fully proper or a quasi-proper manner.

Simply stated, the trial court should hold a hearing and determine if the city assessor via Vanguard's actions were illegal and void as the trial judge states. See Hanselman v. Humboldt County, 173 N.W.2d 75, at 78 (Iowa 1969) where it states:

> "It is well settled the systematic and intentional valuation of a particular kind of property at a higher percentage of its actual value than that at which other kinds of property are valued, or the systematic and intentional assessment of taxes on a particular kind of property at a higher rate than that imposed on property of the same kind cannot be upheld." (cites omitted)

Secondly, whether the state tax manual used by Vanguard, as it related to willing buyer-willing seller, was only a "significant omission" under Tiffany v. County Board of Review In and For Greene County, 188 N.W.2d 343 (Iowa 1971) and its affects. The third alternative, of course, would be that Vanguard's use of the state tax manual turned out to meet the criteria of willing buyer-willing seller and accordingly those new valuations were entirely proper.

If after that determination is made, the plaintiffs then may proceed in accordance with the results of that decision pursuant to the Board of Review procedures, 441.35 and 441.37 if appropriate.

I would reverse and remand the matter to the trial court for hearing.