Appeal No. VA11/3/030

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Gadera Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2007974, Laboratory at Lot No. 3H/2, Moyne Lower, Enniscorthy Rural, Enniscorthy, County Wexford.

B E F O R E
Niall O'Hanlon - BL **Deputy Chairperson**

Frank O'Donnell - FRICS, B Agr Sc, MIREF **Member**

Tony Taaffe - Solicitor **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 8TH DAY OF FEBRUARY, 2012

By Notice of Appeal dated the 8th day of August, 2011 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €100 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are:
"The property is being used as a primary production facility for production of plants for our nursery." "The property should be excluded from valuation." "The general description of laboratory is incorrect. It is mainly a plant micro-propagation & growing facility." "The building is solely used for the production of and production research of plants for growing at Fitzgerald Nurseries." "The facility carries out the same primary production as a plant nursery using method that must be sterile." "Plant micro-propagation is a primary production activity in horticulture. All plants go to sister company Fitzgerald Nurseries."

An oral hearing in respect of this appeal took place in the offices of the Valuation Tribunal at Ormond House, Ormond Quay Upper, Dublin 7, on the 13th day of December, 2011. Mr. Pat FitzGerald appeared on behalf of the appellant and Ms. Rosemary Healy-Rae BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent and Mr. Oliver Barry, a Valuer in the Valuation Office was also present.

The Subject Property

Property No. 2007974, the subject property, is situated in the IDA Industrial Estate which fronts the N11 on the northern side of Enniscorthy.

The subject property comprises a double industrial unit which has been fitted out to provide laboratory conditions. The building is steel framed with concrete walls to 4.0m eaves and a double skin corrugated asbestos roof. There is a small enclosed yard at the front.

The accommodation comprises two offices, lobby, changing area, main laboratory with ovens area off, passage with three growing rooms off, jars store, store with fridge/equipment, office, canteen and toilets. There is a small loft space of approximately 32 square metres with low headroom, which is of no additional value. The property has suspended ceilings and air conditioning is installed.

It is not in dispute between the parties that the subject property is held by the IDA on a 35 year lease from 1985 and that it is sublet to Gadera Limited.

The Valuation History of the Subject Property

A revision request was received by the Valuation Office, from Wexford County Council, on the 11th May, 2010. The nature of revision was 'Unit currently being used to artificially grow plants indoors and include any works'.

On the 6th October, 2010, following inspection, a Draft Certificate was issued at a rateable valuation of €100. Representations were made on the 3rd November, 2010 (also by e-mail on the 12th October, 2010) to the Revision Officer. On the 26th November, 2010, a Valuation Certificate was issued at a Rateable Valuation of €100.

The appellant lodged an appeal on the 31st December, 2010 (also by e-mail on the 23rd December, 2010). On the 11th July, 2011, a Notice of Decision to Disallow Appeal was issued. By Notice of Appeal, received by the Tribunal on the 9th August, 2011, the appellant appealed against the decision of the Commissioner of Valuation.

Written Submissions

Written submissions were received by the Tribunal from both the appellant and the respondent.

The Issue Arising on this Appeal

The appellant contends that the subject property comes within paragraph 5 of Schedule 4 of the Valuation Act, 2001 and that it accordingly falls to be treated as relevant property not rateable.

The Evidence adduced on behalf of the Appellant

Mr. Pat FitzGerald, who gave evidence on behalf of the appellant, adopted his précis as his evidence-in-chief. Mr. FitzGerald gave evidence that he and his wife, Mrs. Noirin FitzGerald, were the owners of the appellant and that they were also the owners of a company called FitzGerald Nurseries Limited.

Mr. FitzGerald stated that he rents land, which forms part of his farm in Co. Kilkenny, to FitzGerald Nurseries Limited for a nominal fee and that this company also rents another nursery location for production purposes, just north of Kilkenny, 18km from, what Mr. FitzGerald described as, the main location.

Mr. FitzGerald gave evidence that the appellant carried out the horticultural activity of plant micropropagation in the subject property and that horticultural activity in the property was performed on plants which could not be commercially or viably produced through any other method.

Mr. FitzGerald gave evidence that the original plant always came from FitzGerald Nurseries Limited having been procured from a breeder in Ireland or abroad.

Mr. FitzGerald stated that, once rooted, the plants were shipped to FitzGerald Nurseries Limited; that production was started and carried out in conjunction with FitzGerald Nurseries Limited, for direct sales of the plants to export markets outside of Europe and hardening the plants to final sales within Europe.

In cross-examination Mr. FitzGerald accepted that the lands rented by FitzGerald Nurseries Limited were located in or about 40 miles away from the subject property.

The Evidence adduced on behalf of the Respondent

Mr. Oliver Barry, Valuer, who was called on behalf of the respondent, adopted his précis as his evidence-in-chief.

The Submissions on behalf of the Parties

The submissions made on behalf of both the appellant and the respondent are set out in the Findings of the Tribunal below.

Principles applicable to the Interpretation of the Valuation Act

Ms. Healy-Rae, on behalf of the respondent, drew the Tribunal's attention to the decision of the High Court in **Nangles Nurseries v. Commissioners of Valuation [2003] IEHC 73**, wherein MacMenamin J. having considered the relevant authorities, set out, at paragraph 39, the approach to be applied to the interpretation of the provisions of the Valuation Act 2001:

> *"I would therefore summarise the principles which are applicable in an interpretation of this statute in light of these authorities as follows:*
>
> *(1) while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable;*
>
> *(2) the Act is to be strictly interpreted;*
>
> *(3) impositions are to be construed strictly in favour of the rate payer;*
>
> *(4) exemptions or relieving provisions are to be interpreted strictly against the rate payer;*

(5) ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer;

(6) if however there is a new imposition of liability looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language;

(7) in the case of ambiguity the court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it."

Findings

Mr. FitzGerald, on behalf of the appellant, submitted that the subject property constituted a farm building within the meaning of paragraph 5 of Schedule 4. Mr. FitzGerald relied on the definition of "farm buildings" contained in section 3 of the Valuation Act, 2001, (hereafter the Act) in particular, paragraph (c) of the definition, which provides that farm buildings means:

"buildings, parts of buildings, or other structures, occupied together with land developed for horticulture or forestry and used solely in connection with the carrying on of horticultural or forestry activities, as the case may be, on that land,".

Mr. FitzGerald also relied on the definition of "land", (which word appears in the definition of farm buildings) contained in section 3 of the Act. The section provides that land:

"*includes any structure erected on land and any land covered with water;"*

Mr. FitzGerald advanced the argument that the subject property constituted a building, which was occupied *together with* land, which was defined by the Act to include any structure on land. A consequence of this argument is that the subject property constitutes both buildings *and* land within the definition of farm buildings.

Mr. FitzGerald relied on this interesting, if circular, argument to establish the proposition that the subject property constituted farm buildings within the meaning of paragraph 5 of Schedule 4 and accordingly fell to be treated as relevant property not rateable.

However, Ms. Healy-Rae BL, on behalf of the respondent, drew the Tribunal's attention to the fact that, so far as the definition of farm buildings is concerned, the word land appears within the phrase *"land developed for horticulture"* which is itself defined in section 3 of the Act as meaning:

> *"… land used for market gardening, nurseries, allotments or orchards, other than land or buildings, or parts of buildings, used for the sale or processing of horticultural produce;"*

Ms. Healy-Rae went on to submit that it was this definition which should be inserted into the definition of farm buildings contained in section 3 of the Act, in particular, paragraph (c) of the definition; thus producing the following extended definition of farm buildings:

> *"buildings, parts of buildings, or other structures, occupied together with land used for market gardening, nurseries, allotments or orchards, other than land or buildings, or parts of buildings, used for the sale or processing of horticultural produce and used solely in connection with the carrying on of horticultural activities, on that land,"*.

The Tribunal holds that the approach argued for by Ms. Healy-Rae is the correct approach in law to the interpretation of the relevant statutory provisions. In consequence thereof, whilst the subject property may be regarded as constituting buildings for the purposes of the definition of farm buildings it cannot constitute land for the purposes of that definition and accordingly, the Tribunal must hold against this aspect of the appellant's argument.

However, the Tribunal must consider two further issues; *firstly,* can it be said that the subject property was *occupied together with* land developed for horticulture? and; *secondly,* can it be said that the subject property was used solely in connection with the carrying on of horticultural activities on that land?

Insofar as the first issue is concerned, the appellant relied on the decision of the Tribunal in **VA 95/6/014 - Lynch Culligan Farms**, a judgment of the 21st June 1996, in support of the proposition that it was not necessary that buildings which were occupied together with land should be contiguous with such land.

Whilst it is the case that the Tribunal in that case did find that a building could qualify for agricultural exemption notwithstanding that it formed part of a farm consisting of several parcels of land, the closest of these being two to three miles from the subject property, the furthest being some 40 to 50 miles away, the Tribunal considers this case to be of limited assistance given that it was concerned with the provisions of the Valuation Act 1852.

In addressing the first of the two further issues which this Tribunal must consider, Ms. Healy-Rae referred the Tribunal to the decision of the House of Lords in **Eastwood Ltd. v. Herrod [1971] A.C. 160** and, in particular, the speech of Viscount Dilhorne wherein he stated, at page 180:

> *"To succeed, the appellants have to establish (1) that the buildings were occupied together with agricultural land; and (2) are solely used in connection with agricultural operations thereon, that is to say, on the agricultural land.*
>
> *In this case the respondent conceded, somewhat surprisingly, that all the buildings were occupied together with the 1,150 acres. But for this concession I do not think I should have found it easy to conclude that the packing station in Gainsborough nine miles or so away was occupied together with the agricultural land in the sense in which those words are used in the definition, and it may be that I would have had difficulty in coming to that conclusion in relation to the five layer houses at Norton Brisney some six miles away and some of the other buildings.*
>
> *In its context "occupied together with agricultural land" may connote more than common ownership. My impression on reading the definition of "agricultural buildings" is that it was an attempt by the draftsman to define a farm in statutory language and that it was intended to include buildings used and occupied together with the land for the purpose of farming the land, not buildings far distant and not*

> *used in connection with an operation on the land, even though owned by the same person."*

The Tribunal accepts the respondent's argument that Viscount Dilhorne's approach represents the correct approach to the law in this jurisdiction. Insofar as the first further issue which this Tribunal must consider is concerned, it is clear that the building with which the land is occupied must not be far distant.

The Tribunal notes that the appellant did not dispute the respondent's contention that the land which the appellant argued was occupied together with the subject property was located in or about 40 miles from the said property. On the facts the Tribunal holds that the subject property cannot be said to be *occupied together with* land developed for horticulture within the meaning of the Act.

The Tribunal further notes that the evidence adduced discloses that the land which the appellant argues is occupied together with the subject property is neither owned nor occupied by the appellant. The evidence adduced was that FitzGerald Nurseries Limited rented two sites, one from Mr. FitzGerald and one from a third party. It is a truism to state that, as a matter of law, in relation to both FitzGerald Nurseries Limited and Mr. FitzGerald, the appellant constitutes a separate legal entity.

In addressing the second of the two further issues which this Tribunal must consider, Ms. Healy-Rae again referred the Tribunal to the decision of the House of Lords in **Eastwood Ltd. v. Herrod [1971] A.C. 160** and, in particular, the speech of Viscount Dilhorne wherein he stated, at page 181:

> *"Were the appellants' buildings "used solely in connection with" these operations? In my opinion, the answer is, No. I think that the language of the definition requires that buildings to come within it must be used as adjuncts to the agricultural operations on the land, or as Donovan L.J. said in Gilmore v. Baker-Carr [1962] 1 W.L.R. 1165, 1175 "ancillary or complementary to the agricultural purpose of the land, and not vice versa."*

Ms. Healy-Rae also referred the Tribunal to the speech of Lord Morris of Borth-y-Gest wherein he stated, at page 176:

> *"In **Gilmore v. Baker-Carr [1962] 1 W.L.R. 1165**, the facts differed in some important respects from those in the present case. I agree with the result there reached and I think that the views that I have expressed in regard to the statutory definition coincide with what was there said by the members of the Court of Appeal. Thus Donovan L.J. said, at p. 1175:*
>
> > *"… the clear impression which I receive from the statutory language is that the buildings exempted were to be ancillary or complementary to the agricultural purpose of the land, and not vice versa."*
>
> *And, at p.1176:*
>
> > *This part of the definition emphasises in my opinion that what the legislature had in mind was a building whose purposes were ancillary to or complementary to agricultural work on the land."*
>
> *He rejected the view (as I do) that it would suffice to find "one over-riding purpose" and to find that the land and the buildings each contribute something to that purpose."*

Again, the Tribunal accepts the respondent's argument that the approach of the House of Lords represents the correct approach to the law in this jurisdiction.

The Tribunal notes Mr. FitzGerald's evidence that horticultural activity in the property was performed on plants which could not be commercially or viably produced through any other method. The Tribunal finds that, in the circumstances, the purposes of the subject property cannot be described as subsidiary or ancillary.

Determination

Accordingly, the Tribunal disallows the appeal on the ground that the property should be excluded from the valuation list in the present proceedings pursuant to paragraph 5 of

Schedule 4 of the Act. In consequence thereof the rateable valuation of the subject property remains fixed at €100.

And the Tribunal so determines.