

Appeal No. VA88/0/003

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 1988
VALUATION ACT, 1988

Central Applications Office

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices (1st, 2nd & part 3rd floor) on Lot No: 8 Eglington Street, St. Nicholas Ward,
County Borough of Galway

B E F O R E

Mary Devins

Solicitor (Acting Chairman)

Paul Butler

Barrister

Brian O'Farrell

Valuer

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF MARCH, 1989

By notice of appeal dated the 4th day of August 1988, the appellant appealed against the respondent's determination of the rateable valuation of the above described hereditaments at £230.

By letter dated 19th December 1988 the Solicitors for the appellant, Messrs Matheson Ormsby & Prentice of 3 Burlington Road, Dublin 4 indicated that the grounds upon which

the appellant intended to rely at the hearing was that "because of their status and function they are exempt from rating by sections 63 of the Poor Relief (Ireland) Act of 1983 as the buildings are 'dedicated to or used for public purposes'". In the said letter the appellants Solicitors set forth eight authorities for that proposition and were good enough to enclose copies of those authorities. A copy of the said letter dated 19th December 1988 is appended hereto at Appendix A.

Mr T Costello, a district valuer with 26 years experience in the Valuation Office, made a written submission dated the 14th December 1988.

In the said submission, Mr Costello indicated that he inspected the property in March 1988 and found it consisted of offices at first, second and third floor level. The three floors are held on a 25 year lease with 5 year reviews from 4/2/77 at a rent of £27,500 (1987 review). Lessee is liable for rates, interior repairs, maintenance and repairs of windows and lift, payment to the lessor of the amount expended by him in insuring the premises against loss or damage by fire, loss or abatement of rent and other perils and for all electricity charges. The lessor is liable for the maintenance and repair of the roof, main walls and supports and the exterior of the premises.

A small section of the third floor (16 square metres approximately) was sublet to "Oil Base (Ireland) Ltd." on a short term letting agreement (1 year from 1/11/87) at a rent of £2400 p.a. (includes rates, lift maintenance, light heat, power and heating).

Prior to 1987 first appeal the first and second floor offices were valued at R.V. £185 and the third floor offices were valued at R.V. £90.

The Commissioner fixed the valuation on the part of the third floor occupied by "Oil Base (Ireland) Ltd." at R.V. £10 and the remainder of the third floor as well as the first and second floor occupied by the C.A.O. at R.V. £230. The said £230 was agreed by the appellants agents subject to the question of rateability.

The oral hearing took place in Galway on the 12th January 1989 when Mr Conor Fahey, Barrister-at-Law instructed by Messrs Matheson Ormsby & Prentice, appeared on behalf of the Appellants and Mr Aindrias O Caoimh, Barrister-at-Law instructed by the Chief State Solicitor appeared on behalf of the Respondent.

Dr. Martin Newel in evidence indicated that he was the head of the C.A.O. and that in 1976 the appellants started preparing for the admission of students in 1977. The Appellants catered for 10 institutions at a fee of £18 per applicant. The objective of the appellant was to provide a service to the public at large and its objective was to break even each year. Some years there was a small profit, in others there was a small loss. He emphasised that this service was available to the public at large.

Submissions were made on behalf of both the appellant and the respondent. The Tribunal is satisfied that the appellant is an institution which does not seek to make any profit and which exists to serve a public need. This is not the subject matter of any dispute.

It was held by Lord McNaghten in the case of *The Commissioners for Special Purposes of Income Tax v. Pemsel* (1891) that the legal meaning of "charitable purposes" in Ireland and England is comprised of four principal divisions known as The McNaghten Rules for Charity

- (a) Trusts for the relief of poverty.
- (b) Trusts for the advancement of education.
- (c) Trusts for the advancement of religion.
- (d) Trusts for other purposes beneficial to the community not falling under any of the preceding heads.

The single question for determination by the Tribunal appears to be whether the premises are used exclusively for charitable purposes within the meaning of section 63 of the Poor Relief (Ireland) Act, 1838. The Tribunal has no doubt that the premises are being used for very worthy and social purposes to serve the community at large and what would be regarded as charitable in the ordinary sense of the expression; however, the Tribunal is conscious that "charitable purposes" in the valuation code has received a restricted interpretation in the courts through the years.

The Valuation (Ireland) Act, 1854 section 2 provides that in making out the lists or tables of valuation mentioned in the Valuation (Ireland) Act, 1852, the Commissioner of Valuation shall distinguish all hereditaments and tenements or portions of the same of a public nature or used for charitable purposes or for the purposes of science, literature and the fine arts as specified in 5 and 6 Vict., c. 36, and that all such hereditaments or tenements or portions of the same, so distinguished, shall as long as they shall continue to be of a public nature and occupied for the public service or used for the purposes of the aforesaid, be deemed exempt

from all assessment for the relief of the destitute poor in Ireland and for grand jury and county rates.

The grounds for exemption from rates (as the Supreme Court has held in the cases of McGahon and Ryan v. Commissioner of Valuation (1934) I.R. 76 and Barrington's Hospital v. Commissioner of Valuation (1957) I.R. 299 are to be found in the proviso to S. 63 of the Poor Relief (Ireland) Act 1838 -

'Provided also, that no church, chapel, or other building exclusively dedicated to religious worship, or exclusively used for the education of the poor, nor any burial ground or cemetery, nor infirmary, hospital, or charity school or other building exclusively used for charitable purposes, nor any building, land, or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.'

As Mr. Justice O Dalaigh (as he then was) pointed out in the Barrington's Hospital Case (at p. 340) the proviso is divided into four categories by the use of the conjunction, 'nor'.

Aside from that proviso to that section of that Act, if one were to rely on Section 2 of the Valuation (Ireland) Act 1854, the Tribunal would not doubt that the hereditaments in question should be regarded as 'of public nature or used for charitable purposes'.

Mr. Justice Kingsmill-Moore said that the following propositions would appear to be warranted by the Irish authorities on the wording of the proviso to S. 63.

"1, Apart from specific exceptions to be found in other statutes (such as Marsh's Library, Armagh Observatory, and buildings belonging to certain societies instituted for purposes of science, literature, or fine arts) the grounds for exemption from rates must be found in the proviso to s. 63 of the Act of 1838 (McGahan and Ryan's Case (2)).

2, "Charitable purposes" in s. 63 has a meaning less extensive than the meaning given to those words in Pemsel's Case (3). How much less extensive

has never been decided, but at least there must be excluded from the denotation of "charitable purposes" in the section of any charitable purpose which is mentioned expressly in the section (O'Neill's Case (4) and Scott's Case (5) as applied to s.63).

3, Neither the wording of s. 63 nor any authority leads to the conclusion that "charitable purposes" means, or is confined to, "charitable purposes devoted exclusively to the benefit of the poor."

4, The word "exclusively," in no way alters or modifies the meaning of "charitable purpose." It does ensure that, in order to qualify for exemption, a building must be used for charitable purposes only. Where a building is used for mixed purposes, some charitable, some non-charitable, it is not exempt, though if the purposes are carried on in different buildings or in different parts of the same building s. 2 of the Valuation Act, 1854, gives power to the Commissioner to distinguish as exempt the buildings or portions of buildings which are exclusively used for charitable purposes. (O'Connell's Case (1), Clancy's Case (2), case of the Good Shepherd Nuns (3)).

(1) 49 I.L.T.R. 103. (3) [1891] A.C. 531.

(2) [1934] I.R. 736. (4) [1914] 2 I.R. 447.

(5) [1892] 2 Q.B. 152.

The Tribunal is of the opinion that the law is now well established that before a building can be regarded as used for public purposes it must either belong to the government or each member of the public must have an interest in the property; cf. Kerry County Council case.

Having regard to all of the foregoing and to the judgments of this Tribunal in the appeal of St. Macartan's Diocesan Trust (appeal No. 88/100) and in the appeal of Sister Sally Mounsey and Sisters of Mercy Birr (appeal No. 88/127) the Tribunal has come to the conclusion that it must affirm the respondent's decision in this matter.

