Appeal No. VA88/0/122 & 286

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Siuicre Eireann and Cork County Council   <u>**APPELLANT**</u>

and

Commissioner of Valuation   <u>**RESPONDENT**</u>

RE: Co. Cork

B E F O R E
Hugh J O'Flaherty   **S.C. Chairman**

Paul Butler   **Barrister**

Brian O'Farrell   **Valuer**

<u>JUDGMENT OF THE VALUATION TRIBUNAL</u>
<u>ISSUED ON THE 13TH DAY OF SEPTEMBER, 1989</u>

On the 7th December, 1988, his Honour Judge Murphy gave a decision in Cork Circuit Court which dealt with the same installations as are now before the Tribunal. At the conclusion of his judgment application was made on behalf of the Commissioner for a case stated. It is agreed between the parties that no step has been taken on foot of that request to process that case stated. No draft case has been submitted to the learned Circuit Court Judge and it seems to the Tribunal that that application is now moribund. Indeed, Mr O'Caoimh, in answer to a question put by the Tribunal, said that the Commissioner might not intend to process that case stated at all if he got a

favourable verdict from this Tribunal. The Tribunal, having regard to its experience in respect of what happens when a request is made for a case stated, has come to the conclusion there must be the strongest imaginable presumption that this case stated will never see the light of day.

Mr Daly has categorised the Commissioner's attitude as the "worst form of forum shopping" and feels that he should now be compelled to state in writing that he does not intend to proceed with the case stated. He said that it is not fair that his clients should be subjected to two separate proceedings and that there should be some finality and that that finality should be established by a decision in the Superior Courts.

The Tribunal takes the view, and has taken the view in the past, that once a party appeals to it there is an obligation on such a party to see through its appeal, irrespective of whether there is a case stated requested or even pending.

The Tribunal is quite satisfied that any party who wishes to have a point of law determined in the High Court by way of case stated can have this done quite speedily if there is the will to have it done. What is required is that the parties should agree the points at issue; make an application to the President of the High Court for an early disposal of the matter and the Tribunal is satisfied that such an application would be granted and that parties could get such a case on very speedily. However, where there is an absence of such will then one would fast approach the situation adverted to by Mr Justice Costello in his judgment in <u>Pfizer Chemical Corporation v. Commissioner of Valuation</u> (judgment delivered on the 9th May, 1989) where he referred to a valuation made 19 years before.

Mr Daly has rightly pointed out that this is an administrative tribunal as opposed to a court of law established under the Constitution. The whole point of an administrative tribunal is that it

should get on with its task as speedily and as informally as possible but consistent with rendering justice to all parties nonetheless.

Mr Daly has adverted to the undesirability of having different results in respect of the same facts. Mr O'Caoimh and Mr McKechnie (on behalf of Cork County Council) disputed whether the facts would necessarily be the same at the pending hearing before the Tribunal.

The Tribunal, on this application, will make no finding in relation to that but will reserve this issue for fuller argument at the actual hearing.

In a word, the Tribunal is deciding this application on the basis that there is no reality in thinking that the case stated will ever be processed but, in the alternative, it would not be disposed to grant an adjournment on the basis of some remote possibility the case stated would go on.

It takes the view, unless corrected by the High Court that it has to work out its own salvation; fix its lists and get on with the task entrusted to it as best it can. It cannot allow cases to repose indefinitely in some sort of forensic limbo.