

Appeal No. VA88/0/130

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

**The National Association of Widows in Ireland Ltd**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Premises at Lot No. 12 (2nd Floor) Upper Ormond Quay, County Borough of Dublin

**B E F O R E**

**Hugh J O'Flaherty**

**S.C. Chairman**

**Mary Devins**

**Solicitor**

**Brian O'Farrell**

**Valuer**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 25TH DAY OF NOVEMBER, 1988**

By notice of appeal dated 18th day of August, 1988, the appellants appealed against the decision of the respondent refusing them exemption from rates on the grounds of its charitable status; these grounds were elaborated upon in their further notice dated 25th August, 1988.

The appellants presented their written submission by their solicitors Greg O'Neill & Co. on the 9th November, 1988 and Mr William M Walsh B.Agr. Sc A.R.I.C.S., a Chartered Valuation Surveyor and a District Valuer in the Valuation Office with in excess of 18 years experience, presented his written submission on the 7th November, 1988.

There is no dispute on quantum which was fixed at £21.

The sole question for resolution before the Tribunal is whether the premises are entitled to exemption from rates as being used exclusively for charitable purposes.

There were handed in, in evidence the certificate of incorporation of the association which is a company limited by guarantee together with its memorandum and articles of association. There was also handed in, in evidence "The World of Widowhood" - experiences of widows with dependent children living in urban Ireland by Eileen Murphy, Joyce O'Connor and Helen Ruddle and which was commissioned by the National Association of Widows in Ireland as well as a letter from the Revenue Commissioners dated 3rd September, 1986, certifying that the Revenue Commissioners regarded the appellants as a charity for tax purposes.

The main objects for which the appellants association was established are set forth at clause 2 of the memorandum of association and the aims which it is to pursue on behalf of widows are set forth in clause 3. These clauses are reproduced below.

2. The main objects for which the Association is established are, to pursue any lawful action or objective to aid and assist by any means, to counsel and support and to promote any measure which is in the interests of widows in Ireland and their dependents and either directly or indirectly through any person, organisation or other agency, to act and promote the interests of widows as far as this may be done by a body of persons established for charitable purposes only and not otherwise.
3. The Association is established to pursue all or any of the following aims on behalf of widows in furtherance of the main object:-
  - (a) To pursue any action or objective likely to benefit widows.
  - (b) To help and support widows in all their problems resulting from widowhood and in particular to help, counsel and support widows who are recently bereaved, isolated and confused and to supply support, aid and comfort to widows and their dependents following bereavement and to assist the widow in adjusting to her new role in Society.

- (c) to help and support all professions in the provision of counselling services and facilities for widows and to pursue any measure of benefit to those services.
- (d) To foster and encourage the provision and maintenance of training, education and information in assisting widows in dealing with bereavement and the isolation that follows bereavement and to provide widows to the best of the Associations ability with the foremost knowledge, skills and up to date information and the best means of coping with their problems and pursue all such things as are incidental or conducive to the welfare of widows.
- (e) To acquire and disseminate information and advice to service and counsel and to support and act on behalf of widows on any social, economic or other matter which is in the widows interest. In particular but without prejudice to the generality of the foregoing:-
  - i) The dissemination of information to enable widows to obtain their full entitlements under the Social Welfare code
  - ii) To provide counselling, particularly for newly bereaved widows.
  - iii) To assist widows to integrate into Society and become useful citizens of the State.
  - iv) To assist widows in finding useful employment. to liaise with all State and Semi-State agencies through their training and re-training programmes to achieve this aim.
  - v) To work towards the provision of creche and child caring facilities for widows with dependent children.
  - vi) In cases of emergency to act in the relief from poverty of

any such widow as the Association shall deem fit.

- f) To sponsor and promote research by medical, psychiatric counselling and therapist professions and other persons or bodies likely to prove beneficial to widows and to undertake any action likely to improve the social, economic, psychological and general welfare and well-being of widows and in furtherance of this to form and establish a special research committee to this end.
- g) To seek, approach, co-operate with and encourage any person, organisation, company or other agency which may be in a position to assist in the improvement of the welfare of widows or assist the Association in its objectives.
- h) To create public awareness, interest and support of the disposition and needs of widows and their dependents and to direct, educate and enable all interested persons, organisations or other agencies by means of publications, meetings, seminars, courses, conferences or other forms of communication to contribute to the interests and benefit of widows and/or their dependents and provide suitable help of any kind.
- i) To receive, maintain and hold by bequest, devise, gift, subscription, donation or otherwise, either absolutely or conditionally or in trust, any monies, investments, securities or property, real or personal of every description and wheresoever situated without limitation as to amounts or value and to convey or assign any properties and to invest, re-invest any principal or interest and to direct, manage and expend the income and principal for the Association and to administer any special funds for various purposes as agreed upon by the Association and the agency or agencies providing such funds.
- j) To approach, encourage and co-operate with all individuals, groups, institutions, organisations or bodies corporate with which such co-operation shall be expedient and beneficial for the

purposes of the Association.

- k) to undertake and execute any trusts, charitable or otherwise in Ireland or elsewhere which may be deemed expedient for the purposes of the Association.
- l) To purchase, take on lease, hold, mortgage, charge, lease, sell, manage, turn to account, acquire and dispose of lands, buildings, investments, rights and properties of all kinds, real and personal, in the Republic of Ireland and elsewhere.
- m) To employ and pay any corporation, body corporate, person or persons to act as trustees or trustee on behalf of the Association to receive, manage and disburse monies, or to act generally as servants or agents of the Association.
- n) To invest and deal with monies of the Association not immediately required upon such securities and in such manner as may from time to time be determined and to invest any monies coming into the hands of the Association as trustee in or upon such investments, securities or property as may from time to time be determined.
- o) To borrow or raise money for the purposes of the Association or for the purpose of any trust undertaken by the Association on such terms or on such security as may be thought fit, and in particular by the issue of debentures or debenture stock, perpetual or otherwise, charged upon all or any of the Association property both present and future and to purchase, redeem or pay off any such securities.
- p) To draw, make, accept, endorse, discount, execute and issue promissory notes; bills of exchange, warrants, debentures and other negotiable or transferable instruments.
- q) To enter into any arrangement with the Government or authority,

supreme, municipal, parochial or otherwise which may seem to the Council to be conducive to the objects of the Association and to obtain from any such Government of authority, any rights, privileges and concessions which the Council may think it desirable to obtain for the purposes of the Association and to carry out any duties imposed or to be imposed on the Association by act of the Oireachtas of any order made thereunder.

- r) Subject to law, to institute, conduct, defend or compromise legal proceedings by and against the Association or its officers, as such, and to do and authorise to be done all acts, deeds or assurances which may necessarily have to be done to register the Association or any of its properties in any such local or foreign register as may be found necessary or desirable.
- s) To do all or any of the above things in any part of the world, either as principals, agents, trustees or otherwise and either by or through agents, sub-contractors, trustees or otherwise.
- t) To counsel, watch and advise the preparation of any act of the Oireachtas or any other act or instrument of law or any authority with a view to the attainment to the objects aforesaid or any of them.
- u) To do all such other lawful things as are incidental or conducive to the attainment of the objects above."

It is provided that the association is a non-profit making Association and there is a cy-pres clause providing that on the dissolution of the association if there should remain any property after the satisfaction of all debts and liabilities it shall be given to some other institution or institutions having objects similar to the objects of the association.

The oral procedure took place on the 14th November, 1988 when Mrs Barbara Seligman, Barrister (instructed by Mr Greg O'Neill) appeared for the appellants and Mr Aindrias O Caoimh appeared for the respondent.

As well as the authorities, hereinafter noted, relied upon by Mrs Seligman she placed great stress on the constitutional position of the family as declared in Article 41.

Mr O'Caomh argued that the premises in question, while undoubtedly used for some purposes that were clearly charitable, could not be said to be "exclusively" used for charitable purposes.

The question posed for resolution before the Tribunal, fairly and squarely, therefore was whether the premises were exclusively used for charitable purposes.

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'.

In the Barrington's Hospital case Mr Justice Kingsmill Moore said that "charitable purposes" in section 3 has a meaning less extensive than the meaning given to those words in Pemsel's Case (1891) A.C. 531. "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."

However the fact the Revenue Commissioners have certified that the association is a charity for tax purposes is not conclusive because the requirement for exemption from rating has always been stricter.

The task, therefore, must be addressed again: what are "charitable purposes" within the meaning of the rating legislation?

The appellants are a comparatively new association but as long ago as 1634 the Old Irish Statute 10 Car.1 sess. 3 cap. 1 which was intitled "An Act for the Maintenance and Execution of Pious Uses" contained a list of objects which were regarded as charitable and among those were "the relief of maintenance of any manner of poor, succourless, distressed, or impotent persons." (emphasis added)

Social science has expanded over the years and the range of services provided by the modern State has expanded. The law cannot remain stagnant and, in particular, the Tribunal takes the view that the invocation of the constitutional provisions as regards the family is relevant in deciding whether this association is entitled to exemption on the grounds of its charitable purposes.

The Tribunal is no doubt that the loss of a spouse must be a most traumatic happening in any persons life and any association which is formed to ameliorate the distress caused to such persons must, on any definition, be regarded as charitable.

The Tribunal has adverted to what was said by Mr Justice Hanna in Elliot v. Commissioner of Valuation (1935) I.R. 607 at 614 where he gave his opinion that the words "other buildings" in the fourth category of section 63 of the 1838 Act must be read as ejustem generis with the buildings in that category, such as hospitals, etc. specified in that category. But it appears that this opinion was not necessary for the decision that was reached by the High Court in that case and the Tribunal does not regard this dictum as binding on it. The final question for resolution, therefore, is whether the building is used "exclusively" for charitable purposes, since the



association is, in the view of the Tribunal, engaged in exclusively charitable activities. Any activity carried on in the building (such the work of administration or any form of education) is so inextricably bound up with the main objects of the association as to be part of the charitable purposes for which it exists.

The Tribunal was assisted by the evidence of Mrs Eileen Proctor, a founder member and life President of the Association, who attended with a number of her colleagues and the auditor to the Association. However, the Tribunal emphasises that it reaches its conclusion by reference to the association's main objects. The Tribunal, therefore, determines that the premises in question are entitled to exemption under section 63 of the Poor Relief (Ireland) Act, 1838.

#### **Authorities cited on behalf of the appellants**

Income Tax Special Purposes Commissioners v. Pemsel. 3, TC. 53.

Barrington's Hospital v. Commissioner of Valuation I.R. 1958 p. 299.

Webb v. Oldfield, 1898 I.L.R. 431 p.488.

(referred to at p. 320 Ir. 1957)

Verge v. Sommerville 1924. A.C. 496 p. 500

(referred to at p. 320 Barrington's Hospital Case. 1957 Ir. 320)

Re Hillier 1 A.E.R. 1944 p. 482.

Clonmel Mental Hospital Board v. Commissioner of Valuation 1958 S.C. 1958, IR. 381.

D'alton & Others v. Commissioner of Valuation 1959 IJR. 49. Circuit Court.

Denmark & Others v. Commissioner of Valuation. 1962-63. Irish Jurist Reports 20.

Belfast Association for Employment of Industrious Blind v. Commissioner of Valuation for Northern Ireland.

C.A.N.I. 1968/69 N.I. Reports. p.21.

Royal British Legion of Legion Attendants of Belfast Limited v. Commissioner of Valuation. 1979. C.A. Northern Ireland Reports P. 138.

Springhill Housing Action Committee v. Commissioner of Valuation. Court of Appeal. 1983 Northern Ireland Reports. 184.

Dublin Cemeteries Committees v. Commissioner of Valuation. 2 IR. 157

**and**

Dublin Corporation v. Dublin Cemeteries UR. 1975. Supreme Court. P. 294 and 295 of Mr. Justice Keane's Book on Local Authority.

Inland Revenue v. Peebleshire Nursing Association. 1927 S.C. 215 Good Sheppard Nuns. I.R. 1930 p. 646

O'Neill v. Commissioner of Valuation. 1914 2 I.R. p. 447.

Belfast Y.M.C.A. v. Commissioner of Valuation.  
C.A. 1969. N.I. 3.

Denmark & Others v. Commissioner of Valuation. 1962-63 I.R. Jur. p. 20.  
Commissioner of Valuation v. Fermanagh Protestant Board of Education. H.L. 1970 N.I. 89.

Campbell College Belfast (Governors) v. Commissioner of Valuation. H.L. 1964. N.I. 107.

Belfast Association for Employment of Industries Blind v. Commissioner of Valuation for Northern Ireland. C.A. 1968 N.I. 21.

Royal British Legion Attendants Co. Belfast Limited v. Commissioner of Valuation. C.A. 1979 N.I. 138.

Maynooth College v. Valuation Commission. 1958 I.R. 189.

Dore v. Commissioner of Valuation. 50 I.L.T.R.

Brendans v. Commissioner of Valuation. 1969 I.R. 202.

**Authorities cited on behalf of the respondent**

Barrington's Hospital v. Commissioner of Valuation.  
I.R. 1958 p. 299.

Maynooth College v. Valuation Commission.  
1958 I.R. 189.

Elliott v. Commissioner of Valuation (1935) I.R. 607 at 614.