

Appeal No. VA92/4/029

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

Rainbow Bookshops

APPELLANT

and

Commissioner of Valuation
RESPONDENT

RE: Shop and Stores at Lot No. 9D/4.9B/4.11/6 Townland of Collinstown (Dublin Airport),
E.D. Airport, D.E.D. Dublin - Fingal, Co. Dublin
Validity of revision

B E F O R E
Henry Abbott

S.C. Chairman

Padraig Connellan

Solicitor

Joe Carey

P.C. M.I.A.V.I.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 19TH DAY OF MARCH, 1993

By notice of appeal dated the 8th day of July, 1992, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £535 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the valuation is excessive, inequitable and bad in law".

The Premises

The premises consists of a shop and stores. However, as the quantum of the valuation at R.V. £535 was settled between the parties without prejudice to the proceedings before this Tribunal no evidence was adduced by either parties on the premises.

Valuation History

The subject property was revised in 1990. In November, 1990 the valuation list issued with a rateable valuation fixed at £619. On the 1st December, 1990 the occupier appealed the revised valuation to the Commissioner of Valuation as excessive, inequitable and bad in law. Between July, 1991 and March, 1992 there were negotiations between the appellant and the Commissioner of Valuation and agreement was reached on the quantum, subject to the validity of the revision which the appellant contested. On the 8th June, 1992 the Commissioner issued his first appeal decision reducing the rateable valuation to £535. On the 8th July, 1992 the appellant lodged an appeal to the Valuation Tribunal.

Written Submission

A written submission was furnished to the Valuation Tribunal by Mr. Desmond M. Killen, F.R.I.C.S. I.R.R.V. of Donal O'Buachalla & Company Limited on the 2nd November, 1992 on behalf of the appellant.

A written submission was also furnished to the Valuation Tribunal by Mr. William Walsh B.AGr.Sc. F.R.I.C.S. a District Valuer with 22 years experience in the Valuation Office on the 27th October, 1992 on behalf of the respondent.

The written submissions set out the factual details relating to the revision of the subject premises which gave rise to the legal arguments which are the subject of this appeal. Both

written submissions also included correspondence between the parties on the issues which are the subject of this appeal.

Mr. Killen said that the nub of the matter rests with the Commissioner of Valuation's actions at revision and first appeal. He referred the Tribunal to its decision in **The Trustees of Cork and Limerick Savings Bank (VA/90/3/4)** where the Tribunal held that the revision was invalid because of the failure to comply with the provisions of the Valuation Act, 1988. Mr. Killen stated that in the subject appeal to the Tribunal it was apparent that the respondent in dealing with the revision of the hereditament Lot. 1.2.3AaE Townland: Collinstown, by creating a hereditament Lot 9D/4,9B/4,11/6 Townland: Dublin Airport has invalidated the revision and that the creation of the hereditament Lot 9D/4,9B/4,11/6, Townland: Collinstown (Dublin Airport) is also invalid. The written submission is attached as Appendix B.

Mr. Walsh stated that a complete revision had been carried out of Dublin Airport at 1990 revision. Commenting on the Valuation Lists, Mr. Walsh stated that the statutes require the list to be issued and made out according to townlands. Traditionally the lists were recorded and issued in manuscript form with the townland on the top of each page of the list. Over time the form of the list had changed. The method of recording and issuing the lists in areas such as North Dublin was as follows (cards B.1s) are assembled into townlands these are then issued with a list of townlands on the front page of the volume. Each individual card normally has the townland entered on it.

A copy of Mr. Walsh's written submission is appended to this judgment as Appendix C.

Oral Hearing:

The oral hearing commenced in Dublin on the 29th January, 1993 and resumed on the 5th February, 1993. The appellant was represented by Mr. Richard Cooke, S.C., with Mr. Hugh

O'Neill, B.L., instructed by Mr. Brian Smith of Ross and Hayes, Solicitors. The respondent was represented by Mr. Edward Comyn, S.C., with Mr. Aindrias O'Caoimh instructed by the Chief State Solicitor.

The case crystallised to one issue arising from the fact that whereas the subject hereditament was listed in its request for revision by Dublin County Council under the townland reference of Collinstown, the list of revised tenements and hereditaments submitted by the Commissioner of Valuation in response to that request after revision, listed the subject premises as being situate in Dublin Airport, with no further reference to townland. A different lot number was added to the description, but it was not argued that this change of lot number related to any matter which would vitiate the validity of the revised valuation.

It was agreed between the parties that on first appeal the Commissioner amended the description of the hereditament to read "Collinstown (Dublin Airport)", retaining the same new lot number. Mr. Cooke submitted that by reason of the provisions of Article 37, Paragraph (m) of the 1899 Local Government (Adaptation of Irish Enactments) Order, the Commissioner of Valuation, on revision was obliged to value the subject with reference to Collinstown townland and no other denomination. It was agreed by all parties that there is no such townland as "Dublin Airport".

Mr. Cooke submitted in detail that it would be unlawful for the Commissioner of Valuation to purport to form a new townland of Dublin Airport. This proposition was not disputed by the Respondent and the Tribunal accepts that there is no question in this case of anything else having occurred other than the deletion of the Collinstown townland, and, the substitution therefore of Dublin Airport.

The occurrence was claimed by the respondent to be an error, capable of rectification by virtue of the second set of provisions of Section 6 of The Annual Revision of Rateable Property (Ireland) Amendment Act, 1860, and by virtue of the provisions of the Valuation Act, 1988, transferring the jurisdiction of the Circuit Court in relation to powers of amendment to the Tribunal.

Mr. Cooke submitted that the provisions of Paragraph (m) of Article 37 of the Order of 1899 in relation to the description of the hereditament with reference to townland and no other denomination, meant that this was a mandatory provision, in the absence whereof, the rate was invalid and ought to be struck out, with the revival of the old listed valuation being the operative valuation upon which the occupier might be rated. He cited the case of **Buckley - V- Finnucane, I.L.T.R., Volume 61, Page 124** as indicating that a rate payer such as the appellant in such a situation could not avail of any defences in relation to the invalidity of the rate in summary proceedings for recovery of rates in the District Court. He stated that the appellant in this case had suffered considerable hardship by reason of the application of that case to the claim in the District Court for the recovery of rates from the appellant based upon the revised valuation. He also cited the case of **Sullivan -V- O'Neill, 1963 I.R.** in support of the proposition that the rates ought to be struck out by reason of the omission of reference to townland of Collinstown at revision stage. He also referred to the **VA/90/3/4 Cork and Limerick Savings Bank** case. Mr. Cooke opened **Texaco -V- Revenue Commissioners 1991 I.R., Page 449** as indicating that where the tax payer was concerned legislation ought to be construed strictly and he argued that the valuation code constituted part of the taxation code for the purposes of this rule of interpretation.

Mr. Desmond Killen, F.R.I.C.S., I.R.R.V., Valuer with Donal O'Buachalla & Company Limited, briefly gave evidence in relation to the failure to describe the hereditament properly with reference to townland on the revised list, and his efforts to track down the genesis of,

and rationale for, the change. He referred to the correspondence and to the three maps of the Ordnance Survey, showing the relevant lot number in which the subject was comprised with other tenements and hereditaments. Mr. Killen gave the view, in his evidence, that the Commissioner of Valuation at revision stage, changed the townland description from Collinstown to Dublin Airport not by reason of any casual inattention or error, but advisedly, in connection with an overall revaluation of what may generally be described as the Dublin Airport complex.

Mr. O'Caoimh submitted that the right of the Commissioner of Valuation on first appeal, and of the Tribunal thereafter, to amend errors was clearly stated in the Switzer case 1902 Irish Reports, the Irish Bulk Liquid Storage Limited case - VA88/215 and the Coal Distributors case 1989 Irish Reports 472. He argued that the case McCusker -V- Commissioner of Valuation 36 I.L.T.R. 176, indicated clearly that some provisions of the valuation code were directory and not mandatory and that the requirement in Paragraph (m) of Article 37 referred to by Mr. Cooke, was directory in all the circumstances and non-compliance therewith did not vitiate the effectiveness of the list. He also cited the recent decision of the Supreme Court in Irish Bank of Commerce and John O'Hara, Supreme Court 245- 89 as indicative of the proposition that the courts would not require strict compliance with the judgment Mortgage (Ireland) Act relating to Affidavits required to register a judgment mortgage if there were sufficient information to describe without doubt the property sought to be charged. He conceded that an error had been made, but not such as to render the valuation invalid.

In final response Mr. Cooke cited the case McCusker -V-Commissioner of Valuation 35 I.L.T.R. 198 as an instance where the rate was actually quashed by reason of non-compliance with the requirements of the 1860 Act relating to annual revision, and the purported use of a general revision list which had been unappealed in striking the rate. Mr. Cooke sought to

distinguish the **Irish Bulk Liquid Storage** case and the **Coal Distributors** case on the basis that they dealt with accretions of land and townlands where the boundaries of townlands were found to be displaced or new hereditaments created which were not rated before, and asserted again that the case before the Tribunal related to the intrusion or insertion of a non- existent townland in the description of the hereditament.

Findings:

The Tribunal finds that an error was made in deleting the reference to Collinstown townland and a substitution therefore of Dublin Airport at revision stage. The Tribunal notes the change which was effected by the order of 1899 on the provision and operation of Section 17 of the Valuation (Ireland) Act, 1852 in so far, (as in the present case), whereby the description of the hereditaments and tenements with reference to any denomination other than townland was prohibited in the area of County Dublin where the subject is situate. Section 21 of the 1852 Act requires the Commissioner of Valuation when dealing with first appeals to transmit the list amended at first appeal stage to the local authority. This list shall consist of:-

"a Statement of all Cases in every Townland or
other Denomination in which he shall have so altered or refused to alter the Valuation,
or Statement of the Area of any Tenement or Hereditament or otherwise amended the
same as aforesaid".

Section 21 does not appear to have been specifically altered by paragraph (m) of Article 37 of the 1899 Order, although, by implication the Commissioner of Valuation would seem to be confined to townlands and no other denomination when transmitting the list of appealed valuations to the local authority. Paragraph (k) of Article 37 of the 1899 Order does indicate that the local authority shall publish the results of the first appeal pursuant to Section 21 of the 1852 Act in the same manner as is required in the case of the revised list.

Section 19 of the 1852 Act conferred a wide power of appeal and this is confirmed by the 1988 Act.

The Tribunal is of the opinion that whatever error was made by the Commissioner of Valuation at revision stage in relation to the omission of the townland of Collinstown in the list, the Commissioner of Valuation at first appeal, had an obligation, firmly placed upon him, to amend the description of the subject premises from that contained in the revised list so that a correct statement of the townland in accordance with Section 21 would appear. The Tribunal is also satisfied that had the amendment to be made by the Tribunal this would have been possible by reason of the provisions of Section 6 of the 1860 Act, and the general provisions of the Act of 1988.

The Tribunal finds that the precedents for this approach contained in the Switzer case, the Irish Bulk Liquid Storage case and the Coal Distributors case have been persuasive upon it in reaching this view. Of particular assistance was the following passage of Mr. Justice Blayney in the Coal Distributors case:-

"It was submitted on behalf of the appellant that the whole procedure in regard to plot 88a was vitiated 'ab initio' in that the request for revision did not specify separately the two properties in the lot. I cannot accept this submission. There is nothing in Section 4 of the Act of 1854, pursuant to which the request for revision is made, which requires the tenements to be listed in the units in which they should be valued by the Commissioner. It is the Commissioner's duty to value each tenement separately, as is provided by Section 11 of the Valuation (Ireland) Act, 1852, the opening sentence of which is:-

"In every Valuation hereafter to be made, or to be carried on or completed under the Provisions of this Act, the Commissioner of Valuation shall cause

every Tenement or rateable Hereditament herein-after specified to be separately valued..."

In my opinion, once the request for revision has been made, specifying certain tenements, it is then the duty of the Commissioner to decide in what units they should be valued so as to comply with the requirement in Section 11, and if he should err in this regard, his error can be corrected on appeal. Under Section 23 of the Act of 1852 the Circuit Court judge, on appeal, has power "to make such Order therein as to such Court shall seem fit", and it is clear from Section 6 of the Annual Revision of Rateable Property (Ireland) Amendment Act, 1860, that this extends to making alterations in the valuation lists. The section provides 'inter alia' that "no Alteration shall be made in any List or Lists, or in the Name of any Occupier or Lessor named therein, save by the Commissioner of Valuation, or by some Person duly authorized by him for that Purpose, or by the Order of a Court of General or Quarter Sessions upon Appeal, or other Court of competent jurisdiction".

It is important in this context to note that in the Switzer case the Chief Baron described the requirements of Section 17 of the 1852 Act as "mandatory", but nevertheless referred the case back to the recorder to value "each separate house".

The Tribunal in forming a view on this case, finds that it is unnecessary to decide whether the valuation code under consideration in this case, forms part of the general taxation code or not.

The Tribunal considers that the **State (McCusker) V Commissioner of Valuation 35 I.L.T.R.** relates to a situation where unlike the present one, the whole process of revision was never properly initiated, by reason of the use of the list on a general revaluation. The Tribunal is of the view that the jurisdiction of the county council in listing the cases for revision was properly invoked in this case, and constituted an initiation of a process which

proceeded, albeit with a major error at revision stage ultimately to appropriate correction at first appeal stage.

The provisions of the Judgment Mortgage Ireland Act in relation to the treatment of an affidavit to register a judgment mortgage of property situate into townlands places, the requirements of Section 17 and 21 together with Paragraph (m) of Article 37 in a particular statutory context. In that context it might be asked how the principles in the *Switzer* case would have been decided if the buildings consisted not only of separate tenements but also tenements in two or more townlands connected to each other. It is difficult to see how the omission of one or more of these townlands could leave the case doomed from the start in an unappealable state and incapable of allowing for the scope to amend so freely given by the Chief Barron at the conclusion of the *Switzer* case.

The Tribunal has not been assisted by the judgment in **Sullivan V O'Neill 1963 I.R. 384** and understands that the case referred to therein the **County Council of Donegal and Doherty V McCrossin and another 53 I.L.T.R. Page 15** dealt with the failure to identify the actual occupier when the local authority strikes the rate on the occupier. The importance of correctly naming the occupier was stated in that case to have separate statutory justification not applicable to this case, and has been reinforced by the existence of the obligation on the local authority to notify the occupier of its application to have the list revised, and (now under the 1988 Act) to have the results of the revision notified to the occupier by the local authority. These two cases are thus more in the area of rating than valuation and see also *Cork and Limerick Savings Bank* case.

In conclusion, the tribunal finds that the valuation as determined on first appeal is correct, (the error created at revision having been corrected), and is of the view that no correction or amendment is necessary. The addition of Dublin Airport after Collinstown is mere

surplusage in the statutory context, and if it is of convenience to separately identify the particular part of Collinstown in which the Airport or part thereof is situate, then there is no reason why that particular classification might not remain. In so far as it might be claimed to be necessary, the Tribunal however directs amendment of the description of the subject as being situate in the townland of Collinstown subject to whatever designation is necessary to identify and distinguish that particular townland from others which might be of the same name and that the valuation thereof be determined as agreed between the parties at £535. The parties hereto kindly furnished a list of authorities ably referred to by Counsel in the case and these are annexed hereto as Appendix A.