

Appeal No. VA92/5/003

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

Southern Health Board

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Hospital Out Offices and Yard at Lot No. 23H, Western Road, E.D. Mardyke, County
Borough of Cork

Exemption - Public purposes

B E F O R E

Henry Abbott

S.C. Chairman

Paul Butler

S.C.

Paddy Farry

Solicitor

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 26TH DAY OF MARCH, 1993

By Notice of Appeal dated the 27th day of July, 1992, the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £250 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the former owners held the property for the purpose of a charity. Southern Health Board hold the property exclusively for public purposes under the Health Acts, 1847 to 1986. Even if property is liable to rates the valuation of £250 is excessive".

The Property

The property is situated one mile from Cork City Centre on the Western Road adjacent to the Erinville Maternity Hospital, close to University College Cork and Jury's Hotel. The property was formerly the Eye, Ear and Throat Hospital which closed in 1988. The major portion of the buildings are three storey constructed around 1897 with single and two storey additions. The entire extends to approximately 18,000 square feet gross external area on a site of 25,000 square feet. There is a 150 foot frontage to the Western Road with 45 foot frontage to Mardyke Walk.

Title

The property is held on a 500 year lease from the 23rd July, 1894 at a rent of £50 per annum.

Valuation History

The valuation was fixed at £250 in 1949 and distinguished in the Valuation Lists. Following the 1989 revision no change was made in the valuation. But the property was no longer distinguished. No change was made in 1991 either at revision or first appeal stage.

Written Submissions

A written submission was received from Mr. Dermot Cunningham of Hughes & Mac Evilly, Solicitors on behalf of the appellants on the 23rd of March, 1993.

In the written submission Mr. Cunningham set out the historical basis for the operation of the Health Boards in Ireland and in particular the operation of the Health Boards within the Cork area. Under the Health Act, 1970 he stated that the country was divided for health purposes into eight Health Board areas. The Southern Health Board caters for Cork City and County, and County Kerry. On the establishment of the Board all health, mental health and welfare services of Kerry County Council and of Cork Health Authority were transferred to it. He stated that the services provided by the Board are financed from Exchequer Funds and from the European Social Fund to the tune of almost 100%. There is now no contribution from local rates and no local government or municipal involvement in the provision of the services. Mr. Cunningham then set out details of the property, the subject of this appeal. He said that it was owned by the Incorporated Eye, Ear and Throat Hospital and assigned to the Board by Deed dated the 23rd of April, 1991. The consent of the Commissioner of Charitable Donations and Bequests for Ireland was required and a copy was attached to the written submission. Mr. Cunningham stated that the premises in question adjoined the Erinville Maternity Hospital also owned by the Southern Health Board, he submitted, that at the time of purchase the intention of the Health Board was that the assimilation of the two premises would be carried out for the purposes of the re-

organisation of the maternity services in the area. Obviously, in view of the fact that the premises were adjacent such re-organisation would be easier however, because of the current financial restraints progress on this had to be left in abeyance for the time being. He submitted that the premises had been acquired by the Southern Health Board for use in connection with its statutory services. The Board is prohibited by law, he stated, from using the premises otherwise than for these purposes.

Mr. Cunningham submitted that the appellants in this case would be relying on the decision of the Valuation Tribunal in the case of the **Eastern Health Board -V- Commissioner of Valuation (VA/88/381)**. He submitted that the premises owned by the Board was regarded as being used for public purposes and therefore exempt from rating and that the rating of a Health Board premises by reason of its vacancy did not entitle the Commissioner of Valuation to rate the property.

A written submission was received on the 19th March, 1993 from Mr. Liam Cahill B.A., a Valuer with 12 years experience in the Valuation Office on behalf of the respondent. In the written submission Mr. Cahill set out details of the property and the valuation history. Commenting on the appellants grounds of appeal Mr. Cahill cited the legal basis for exemptions as contained in Section 63 of the Poor Relief (Ireland) Act, 1838 and Section 2 of the Valuation (Ireland) Act, 1854 and stated that "the hereditaments that are distinguished shall so long as they shall be of a public nature and occupied for the public service be deemed exempt". The former Eye, Ear and Throat Hospital he said being vacant and unoccupied is not distinguished in the Valuation Lists.

In relation to the issue of the quantum of this valuation Mr. Cahill stated that the grounds of appeal both at first appeal and at Tribunal stage had included a statement "even if the property is liable to rates the valuation of £250 is excessive". Mr. Cahill stated that he had requested elaboration of these grounds of appeal but this had not been forthcoming. He referred to the Tribunal decision in **Stafford Shipping Limited -V- Commissioner of Valuation (VA/89/201)** and to the Tribunal decision in the case of **Ebeltoft Limited t/a Hunters -V- Commissioner of Valuation (VA/88/165)**. On the basis of the Tribunal's decisions in both these cases, Mr. Cahill submitted that the respondent was prejudiced in this case by the failure of the appellant to furnish detailed grounds of appeal prior to Tribunal hearing. Mr. Cahill stated that relief was available pursuant to the Local Government Act, 1946 for property which is temporarily unoccupied for the purposes of the execution of additions and alterations.

Oral Hearing

The oral hearing took place before the Tribunal sitting at City Hall, Cork on the 25th of March, 1993. Mr. Sean O'Leary B.L. instructed by Mr. Dermot Cunningham of Hughes & Mac Evilly, Solicitors appeared for the appellant and Mr. Aindraish O'Caomh B.L. instructed by the Chief State Solicitor appeared for the respondent. At the outset Mr. O'Leary on behalf of the appellant stated that the appeal was being pursued on the issue of exemption only and the matter of quantum was not being proceeded with.

The case was opened by Mr. O'Leary on the basis that 94% of the funding for the appellant came from the State, that the subject had been acquired by the appellant under a rationalisation arrangement of the Health Services in Cork, whereby the services provided in the subject would be provided elsewhere within the appellants hospital system. It was agreed that at the time relevant to this appeal the subject was in fact vacant, but that it was now used on a casual basis for storing files and such like belonging to the hospital.

The subject was acquired on the basis of discharge of liabilities amounting to £100,000 or so arising from the undertaking carried on therein. The argument arising from these facts then centred on the interpretation of Section 63 of the Poor Relief (Ireland) Act, 1838 which relates to exemption for charitable and public purposes among others. The proviso of that Section reads as follows:-

"...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 any infirmary, hospital, charity school or other building used exclusively 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..."

As it was agreed that although the premises was now used for storage of files which may well be public purposes, the premises was not so used at the time of the appeal and one is forcefully driven to examine whether the other criterion of dedication to public purposes was met in this case. The Tribunal is first of all bound by the rationale in the decision of the Tribunal in the appeal case **Eastern Health Board -V- Commissioner of Valuation (VA/88/381)** dealing with Park House, the property of the Eastern Health Board in relation to the question as to whether the use of premises of the Health Board are public purposes or not. The rationale of that decision together with the agreed acceptance that 94% of the funding for the Southern Health Board is coming from the State has left the Tribunal in the position where it can conclude that the purposes concerned in this case are indeed public purposes within the meaning of Section 63.

The question of dedication is a difficult one by reason of the fact that the premises were actually vacant at the relevant time, and the argument can be made that any property that was not exempt purchased by a Health Board and kept vacant might immediately according to the arguments of Mr. O'Leary, be entitled to the exemption envisaged in Section 63. Mr. O'Leary referred to the contents of the folio by which the subject is registered which contains the following particulars of burden:-

"The property herein having been acquired by the registered owner thereof for its statutory purposes is subject to such restrictions against alienation or letting as may be contained in the Statutory Enactments relating to such property."

He urged upon the Tribunal that this noting of a burden indicated a 'de facto' dedication by the Health Board to the public purposes of the Health Board. Mr. O'Caomh countered by referring to the fact that the burden only related to restrictions against alienation or letting and did not go far enough in relation to the dedication issue. Mr. O'Caomh also referred to Section 2 of the 1854 Act, and sought to argue that this qualified the plain wording of Section 63 in relation to dedication. Mr. O'Leary referred to the decision of the Supreme Court referred to at page 21 of the Eastern Health Board case (Mc Mahon & Ryan -V- Commissioner of Valuation) in which the Supreme Court indicated clearly that the wording of Section 63 was paramount in relation to a decision whether the exemption was to be obtained or not and the Tribunal accepts this counter argument.

Findings

The Tribunal was impressed with the arguments of Mr. O'Caomh that the mere fact of ownership by a Health Board of property, even with the benefit of the special required registration effected in this case, does not entitle the Health Board to an automatic exemption on the basis of dedication to public purposes. However, in this case the subject property had the benefit of the exemption sought now and had been used with the benefit of an exemption for charitable purposes until a short time before the acquisition. Under its previous existence it also received substantial State funding although not governed by any State Body. The lapse in the use of the property as a hospital was not therefore such as would confer any different planning status on the property or lose any exemption gained by the property in relation to the Planning Code as having an exempt use for pre-1963 hospital activity. In this context the Tribunal finds

as a fact that the hospital in terms of the 1963 Planning Act, and, also, in terms of budgetary and health care planning (however tentative and vague), never ceased to have an overall dedication to use and purpose of a hospital. Hence, in the context of the Statutory frame work of the appellants as outlined in the Eastern Health Board case, was dedicated to public purposes. The Tribunal accordingly decides that the subject is exempt for the reasons stated under the provisions of Section 63 of the Poor Relief (Ireland) Act, 1838. The Tribunal finds for the purposes of the Act of 1854 that they are to be distinguished on that basis. While the Tribunal has indicated that they were impressed with Mr. O'Caomh's argument in relation to the occupation of premises which had enjoyed no exemption for charitable or public purposes under the Section prior to acquisition by a Health Board, it makes no decision in relation to the issue as it is unnecessary to do so in this case.