Appeal No. VA93/1/006 - 8

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

Tralee Urban District Council **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: (1) Part of Factory at Map Ref: 2A, 3A, 4A, 5A 7/3, Townland of Clash East (Part of), Urban District of Tralee - R.V. Nil (VA/93/1/006),

(2) Warehouse at Map Ref: 2A, 3A, 4A, 5A.7/2, Townland of Clash East (Part of), Urban District of Tralee - R.V. £265 (VA/93/1/007),

(3) Factory at Map Ref: 2A, 3A, 4A, 5A, 7/1 & 3, Townland of Clash East (part of), Urban District of Tralee - R.V. £2,865 (VA/93/1/008) Co. Kerry

Requirement of sanction for local authority appeal

B E F O R E

Henry Abbott	**S.C. Chairman**
Padraig Connellan	**Solicitor**
Brian O'Farrell	**Valuer**

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 15TH DAY OF OCTOBER, 1993

By Notice of Appeal dated the 11th day of February, 1993 the appellant, being the rating authority for the area in which the subject is situated, appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of Nil, £265 and £2,865 respectively, on the above described hereditaments.

The grounds of appeal are that:-

(a) the reduction in the valuation is not justified having regard to the estimated net annual value of the hereditament

(b) the reduction is bad in law,

(c) the reduction in valuation is excessive and inequitable.

The notice of appeal was received by the Valuation Tribunal on the 12th February, 1993 and the Valuation Tribunal duly notified the notice party, Klopman International Limited of the appeal.

The notice party have made an objection that as the sanction of the Minister for the Environment has not been obtained by the appellant in respect of the appeal prior to the notification of same to the Tribunal, the appellant's appeal is invalid.

The Tribunal directed that a preliminary issue would be heard in relation to this point before dealing with other aspects of the appeal.

The parties exchanged precis and delivered same to the Tribunal. The precis are annexed hereto.

Oral Hearing:

The oral hearing took place in Tralee U.D.C. on the 22nd July, 1993.

Anthony Kennedy, S.C., instructed by Mr. Donal E. Brown, Solicitor, appeared for the appellant, Aindrias O'Caoimh, Barrister-at-Law instructed by the Chief State Solicitor appeared for the Respondent and William McKechnie S.C., instructed by Arthur Cox & Company, Solicitors, appeared for the notice party.

It is common case that no application for sanction of the Minister for the Environment pursuant to Section 1 of the Valuation of Rateable Property (Ireland) Act, 1864 was sought or obtained by the appellant prior to the sending by post of the notice of appeal to the Tribunal by the appellant but that the sanction of the Minister was conveyed within the time limit for the appeal.
Mr. Kennedy, in his submissions, made two important arguments against the proposition of the notice party that the absence of the Ministerial sanction prior to notice of appeal invalidated the notice of appeal.

The first argument was that Section 3(5) Paragraph (a) of the Valuation Act, 1988 provided for a new appeal procedure quite independent of that provided by Section 1 of the Valuation of Rateable Property (Ireland) Act, 1864 which had given the rating authority the same right as the owner/occupier to appeal to the Circuit Court under the Act of 1852, (subject of course to the sanction of the contemporary equivalent, the Minister for the Environment). Section 3(5) Paragraph (a) provides as follows:-

> *"An owner or occupier of property or a rating authority in whose area the property is situated may, by notice in writing sent by post or given by or on behalf of the appellant,*

appeal to the Tribunal against the determination made by the Commissioner under Section 20 of the Act of 1852 within 28 days after the publication of the list of determinations."

Mr. Kennedy argued that to insist that the sanction of the Minister should be obtained pursuant to Section 1 of the 1864 Act was contrary to the clear provisions of Paragraph (a) and he submitted that Subsection 7 which provides *"this section shall have effect notwithstanding anything to the contrary in the Valuation Acts"* outlawed such a contrary provision. He conceded that the Valuation Acts by virtue of Section 12 of the 1988 Act comprised *inter alia* the Valuation Act, 1988, and the 1852 and 1864 Acts for the purposes of construction.

The second submission of Mr. Kennedy was that even if he was incorrect in his first submission, the appeal was, nevertheless, valid by reason of the fact that the sanction of the Minister had been obtained within the 28 day period limited for appeal. He stated that there was no direct authority on the point, but referred to the principal of ratification of contracts and likened the sanction to the consent of the Minister which would be accepted after the initiation of an action which would be subject to approval by consent. He stated that the provisions of Section 1 of the 1864 Act no longer applied to appeals to the Tribunal by reason of the provisions of the Valuation Act, 1988 notwithstanding the absence of an express repealing provision. He stated that the provisions of Statutory Instrument Number 172 of 1993, Local Government Act, 1991 (Removal of Controls) Regulations, 1993, had abolished the need for this type of consent in the 1864 Act and wondered if the Statutory Instrument was necessary in the circumstances in relation to the provisions of the 1864 Act.

Mr. McKechnie argued on behalf of the notice party that the letter of the 23rd February, 1993 from the appellant to the Secretary of the Department of the Environment seeking Ministerial sanction, set up an estoppel against them by which they were prevented from now claiming that the sanction was not necessary. Secondly, he argued that the Valuation Act, 1988 was, by Section 12 of that Act to be construed with the Valuation Acts, and the provisions of Section 1, of the 1864 Act requiring sanction, still applied. He argued that the requirement for sanction was not contrary to the provisions of Section 3 (5) as argued by Mr. Kennedy. He asked the Tribunal to consider the position of the local authority prior to the 1864 Act in so far as they did not have power to appeal. What gave them the power to appeal by virtue of the 1864 Act was the sanction of the Minister. To take any step in relation to an appeal without the sanction of the Minister was a nullity. He stated that there was a difference between the notice of appeal and the appeal. While the local authority could serve a notice of appeal physically as they had done in this case, there was in fact no appeal by virtue of the lack of sanction. The purported notice of appeal in

this case was then invalid and a nullity as being *ultra vires* the local authority. He stated that the subsequent sanction of the Minister did not cure an *ultra vires* situation as there would have to be another notice of appeal sent by the local authority consequent upon the sanction being obtained. This was not done in the present case. Like Mr. Kennedy, he invited the Tribunal to interpret the provisions of the legislation on the basis of plain English, - taking the literal approach. He drew the attention of the Tribunal to the provisions of Section 3(5) Paragraph (a) of the Act of 1988. He argued that Subsection 7 of Section 3 providing that Section 3 shall have effect in relation to appeals notwithstanding anything to the contrary in the Valuation Acts, had the meaning directly opposite to that suggested by Mr. Kennedy in relation to the issue in so far as it inferred that Section 3 incorporated all the previous procedures envisaged by the 1864 Act which Mr. McKechnie argued were not contrary to Section 3.

He argued that the repeated reference to *"the sanction aforesaid"* in Section 2 and *"sanctioned as aforesaid"* in Section 3 of the Act of 1864 meant that the legislator intended the sanction to be a condition precedent for appeal rather than a procedural aspect which could be made good prior to the expiry of the time for appeal.

Finally, Mr. McKechnie argued that the Minister must be presumed by the Tribunal to have known the law when making the Statutory Instrument of 1993 relating to the removal of controls. The Tribunal was not entitled to consider that the Minister acted in that case to remove the required consent or sanction where same had been rendered unnecessary by the 1988 Act.

Mr. O'Caoimh, for the respondent, submitted that he considered Mr. Kennedy's submissions were correct and added that the contradiction between the appellant and the notice party in relation to whether the Minister needed to remove the controls in Section 1 of the 1864 Act by the Statutory Instrument was resolved when it was realised that the 1988 Act did not remove the requirement for sanction in respect of a first appeal by the local authority and was silent about the whole procedure.

Findings:

The Tribunal is of the view that while the letter of the 23rd February, 1993 from the appellant to the Secretary of the Department of the Environment did mention the fact that they had been advised that the sanction of the Minister was necessary, this did not constitute an estoppel. Even if such an estoppel could arise, it would only do so when the notice party was given a legitimate expectation that a certain situation would pertain and was led by the action of the local authority

to act to its detriment. No such case was made on behalf of the notice party and indeed it is difficult for the Tribunal to envisage how such a case could be made.

The Tribunal has carefully considered the arguments made on behalf of the notice party that Section 3 of the 1988 Act was to be read in conjunction with and construed with the 1864 Act. These were on the basis that the appeal envisaged by subsection 5 Paragraph (a) was to be conditional on sanction for same from the Minister for the Environment being obtained prior thereto. The Tribunal finds that the appeal envisaged by Subsection 5 Paragraph (a) was a new appeal quite independent of the provisions of the 1864 Act. The appeal by the owner or occupier under the same section is certainly a new appeal in so far as the requirement of Section 22 of the Valuation (Ireland) Act, 1852 that the appellant/occupier would enter into a recognisance for the pursuit of the appeal is no longer required.

The Tribunal is aware that the Courts Acts have since 1924 transferred jurisdiction from the County Court to the Circuit Court without altering procedures in a particular manner. This manner of transferring jurisdiction has not been invoked or used in the Valuation Act to ensure the result which the notice party would seek to establish through its submissions. While the Tribunal is aware that the courts have consistently admonished against using the meaning of words in one statutory code to help to interpret their meaning in another, nevertheless, in relation to the matter of the jurisdiction of courts and the transfer of the jurisdiction of courts, the Tribunal is influenced by the time honoured method of doing so set out in the Courts Acts, with regard to pre-existing legislation, and the notable absence of the use of such mechanisms in the Valuation Act. Certainly, if nothing more, this observation puts the Tribunal on guard against assuming an unqualified transfer of procedures.

In conclusion, the Tribunal is of the view that an appeal under Section 3(5) paragraph (a) of the Valuation Act, 1988 does not require the sanction of the Minister.

Even if the Tribunal is incorrect in concluding that sanction is not required under Section 3(5) paragraph (a), the Tribunal is of the view that, notwithstanding the notice party's submissions that sanction was a more solemn requirement than consent or approval, the giving of the sanction, albeit after service of a notice of appeal, but before the expiration of the time limit for appeal allocated under the Act, validated the notice of appeal so as to constitute a full appeal within the meaning of Section 1 of the 1864 Act.

In the context of the submissions of both parties in relation to this aspect, the Tribunal has considered the treatment by the courts of statutory time limits relating to the taking of steps in proceedings. The decision of the Supreme Court in the case of **The County Council of the County of Cork** Applicant **-V- Paul Whillock** and **His Honour Judge Anthony Murphy**, Respondents decided in the Supreme Court on the 3rd November, 1992 (I.R. 1993 Vol. 1, page 231), is indicative of one approach of the Supreme Court to the question of extension of a statutory time limit. This case set out the approach of the Court in relation to its inability to extend a statutory time limit and it can be regarded as setting out the conditions in which statutory time limits go to the jurisdiction of a Court in the same way as the notice party has sought, through its *ultra vires* argument, to set up a jurisdictional bar to the Tribunal dealing with the appellant's appeal sent to it before Ministerial sanction.

The Tribunal would rather take the approach of the Supreme Court in the somewhat earlier case; **Irish Refining Plc -V- Commissioner of Valuation** (1990 I.R. 568). In that case the Supreme Court had to deal with a problem presented by a Case Stated which was stated by the Circuit Court outside the time limit of three months limited by statute. The Court in that instance stated that this requirement was directory and not mandatory and that the parties to the proceedings should not be prejudiced by the delay of the Circuit Court in complying with a requirement (albeit statutory) that the Case Stated was to be delivered within a particular time. In this case too, if the Tribunal has been incorrect in its earlier views, the Tribunal considers that the requirement for sanction of the Minister is not to be used as a means whereby the Minister as a *deus ex machina*, through either purposeful or inadvertent delay in granting sanction within the 28 day period but after service of notice of appeal, can vitiate a *bona fide* appeal in which the rating authority may have a valid interest, but also, in relation to which third parties constituting a large section of the public being rate payers and even service charge payers have an interest.

The Tribunal also considers the matter of sanction in the light of the varying treatment by the Courts of matters which are regarded as conditions precedent to jurisdiction and is mindful of the more flexible attitude of the Courts to such claimed conditions precedent where the rights of third parties may be involved.

The Tribunal is impressed with the arguments of the appellant and the respondent in relation to the necessity behind the removal of controls in the Statutory Instrument made under the Local Government Act, 1991. The removal of the control is necessary where the rating authority contemplates a first appeal. The Minister has, thus, done nothing in vain.

Finally, the Tribunal considers that subsection (7) may well invite a schematic approach to interpretation of the role of the Tribunal and appeals to it. While the Tribunal has not adopted this schematic approach it is, nevertheless, firmly of the view that such an approach would confirm the foregoing findings.

Accordingly, the Tribunal decides that the appeal should proceed on the basis of a valid notice of appeal.