

Appeal No. VA95/1/064

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

Con Ryan, Ryans Nurseries

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: House, garden centre, offices and land at Map Ref: 38, Townland: Ballytrasna (Hackett),
ED: Ballysheehan, RD: Cashel, Co. Tipperary
Agricultural exemption - Horticulture

B E F O R E

Liam McKechnie

S.C. Chairman

Marie Connellan

Solicitor

Con Guiney

Barrister

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 15TH DAY OF NOVEMBER, 1996

1. Following a request for revision by the relevant Rating Authority, the Commissioner in November 1993 issued the Valuation List in which there was placed on the above described hereditament a total valuation of £10. This sum was apportioned as to £5 on what was loosely described as a display yard with the balance being attributable to a domestic dwelling house. Being unsuccessful at First Appeal stage the occupier, by Notice dated 15th April 1995 appealed to this Tribunal. The sole ground of appeal as both stated and argued concerned a single, issue, namely as to whether or not the said display yard was rateable.

2. In 1978 Mr. Ryan and his family started a nursery at Ballytrasna, Cashel, Co. Tipperary. The development of this nursery took place over several years and at a pace which suited this family business. From a humble and modest beginning there is now upwards of 10 acres devoted to the cultivation of trees, there are ancillary buildings including machinery sheds, stores and glass houses, there is a car park used for the purposes of facilitating callers and there is adjacent to the dwelling house this area so described as the display yard. It is, as previously stated the rateability of the yard that is the subject matter of this appeal.

3. By far the most important part of the appellant's business is that of tree growing. Most of this takes place and most trees remain in the 10 acres above mentioned. Some trees however, are cut in the winter, are potted and are then placed in the display area where they remain there until such time as they are sold. Mr. Ryan also cultivates shrubs of different varieties and different species. Most, if not all of these commence their growth in protected areas such as a tunnel or glasshouse. Depending on how vigorous they grow they could remain in these areas for upward of two years. Once they are sufficiently mature they are then potted in two litre pots and moved onto this display area. There, like the trees, they remain until sold.

4. This display yard, which measures 30m x 14m is divided into seven or eight rectangular beds, each having an average width of 10ft to 13ft and an average length of 12m to 14m. There is a four inch concrete block kerbing surrounding each one. A series of pathways with a gravel surface provide the necessary access. Each has a soil base on top of which there is a polythene covering. On top of that again there is gravel with a pebble finish. There is about three inches between the pebble finish and the polythene sheeting. There is available an overhead sprinkling system as well as a facility for the release and application of fertiliser. It is on these beds that the trees, but more particularly the shrubs, are placed when potted. There they remain until sold. That can take anything up to three years, but it may be much shorter. In normal circumstances these shrubs do not obtain any nutrient or water from the underneath ground. The polythene and the use of the gravel is designed to prevent the penetration of roots to the ground, though, if a tree remains in situ for a number of years this

may happen. Notwithstanding this however, there is no doubt but that the shrubs which are placed on these beds continue to grow. They may require larger pots if for example they are not sold within one year. Otherwise they become subject to pot blight, will deteriorate and must be discarded. Once sold the area previously occupied by that pot will be replaced with a similar one. The process continues in that way.

5. In the circumstances above described, the Commissioner of Valuation alleges that these beds in effect either solely or predominantly constitute a display area for both retailers and wholesalers who wish to purchase the produce in question. He alleges that such area is therefore not exempt, but is rateable. On behalf of the appellant, it is claimed that under *Ref. 2 of the Schedule to the 1852 Act (inserted by Section 3 of the 1986 Act)* this area is an integral part of his horticultural business and accordingly is exempt. It was solely on this issue that the evidence was directed and submissions were made. Whilst other points were canvassed by both parties in their respective précis of evidence these were not referred to during the course of the hearing and accordingly, we express no view on them. In particular, we feel that no opinion, even obiter should be expressed on, for example the inter-relationship between *Sections 11 & 12 of the 1852 Act* and the Schedule above mentioned, or on the relationship between each separate reference as contained within that Schedule. For an interesting discussion however on this topic see the Supreme Court's decision in the *Trustees of Kinsale Yacht Club v. Commissioner of Valuation [1994] 1 ILRM 457* and Mr. Justices Keane's decision on the *International Mushrooms case* which is reported at *[1994] 2 ILRM 121*.

6. There is no doubt in our view but that the Commissioner was correct in treating both the buildings and the land above mentioned as being exempt from rating on the grounds that the latter was developed for the purposes of horticulture and that the former were constructions affixed thereto which pertained to that development. In our view for the reasons following he should have treated these beds in the same way:-

- (a) the area in question constitutes only a minute percentage of the overall holding and houses no more than 2% of the total crop which is grown in

containers,

(b) the shrubs when moved into these beds continue to cultivate. This growth, is assisted by the presence of an irrigation system as well as a facility for releasing

fertiliser and is evidenced by the fact that larger pots are from time to time required. The shrubs do not die or stagnate. Consequently in our view, the absence of a direct dependency on the underneath ground is irrelevant. The provision of pathways, whilst facilitating would be customers, is also

necessary

for Mr. Ryan and his work mates so that they may attend to these shrubs, whether by way of placement or removal or whether by way of attendance, service or otherwise. If the existence of such pathways was in any way presumptive much less conclusive then the entire area would be rated as there are similar and equally usable pathways elsewhere throughout the development.

(c) This area in our view is quite unlike a display area contained say in a garden centre. According to Mr. Ryan's evidence which we accept, if he was operating the latter type of facility then firstly the beds would not be rectangular in shape, secondly, it would be necessary to have continuously changing colours in a variety of forms, thirdly, continuous changeover would be desirable, quite unlike a duration of perhaps upwards of three years, fourthly, accessories such as trellis, peat, fertiliser, chemicals, wooden barrels etc. would have to be available. None of these are available on site or sold by him.

(d) About 98% of his entire produce are trees. Only 2% could be regarded as plant.

(e) As Mr. Ryan is in the business of horticulture an essential component thereof is undoubtedly the selling of his produce. His market is roughly 75-80% wholesale, with the balance being retail, though he does not advertise. Would be purchasers of course have to be in a position to inspect and select produce for sale. There is no place to do so other than his holding. If this

area is treated, as a display area and nothing more, then logic dictates that the entire nursery should likewise be so treated. We disagree. We believe that whilst these beds afford a convenient location and method in which retailers and wholesalers can inspect the products on display, nevertheless their dominant purpose like that of the nursery is to cultivate and further the cultivation of his shrubs, trees and plants. This being the situation, it necessarily follows, in our view that this display area is not rateable.

7. Finally, we do not believe that a description contained in a sign can alter what in our opinion is a nursery to that of a market garden.
8. Accordingly, this appeal is allowed.