

Appeal No. VA95/3/015

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

**Barbara Hegarty, Comhlamh**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices at Map Ref: 55a (2nd Floor), Grand Parade, Ward: Centre East, County Borough of Cork

Exemption - Charitable Purposes

**B E F O R E**

**Liam McKechnie**

**S.C. Chairman**

**Patrick Riney**

**FRICS.MIAVI.**

**Joe Carey**

**PC.DDSc.DBAdm.MIAVI**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 24TH DAY OF JULY, 1996**

**Description of Property and Valuation History:**

The subject premises are two rooms on the second floor of No. 55, Grand Parade in the city of Cork. These are occupied by Comhlamh. The issue before this Tribunal is a net one and does not concern the descriptive nature of the property, its location or even the actual amount of rateable valuation which should be put on it. The sole ground of appeal is one of rateability. In 1992 the property was revised and a rateable valuation of £11 was placed on it by the Commissioner. Comhlamh in 1994 appealed against that and did so on a legal issue alleging that it was entitled, on the basis of its charitable status, to have the property distinguished in the valuation list. That ground, as so advanced was rejected by the Commissioner and his decision at first appeal was to confirm in principle that the property was rateable but he reduced the valuation of £11 to £9. It is against that decision that Comhlamh now brings this application before the Valuation Tribunal.

Mr. Frank O'Connell, Solicitor appeared on behalf of Comhlamh, and Mr. Willis Walsh, Barrister at law instructed by the Chief State Solicitor representative in Cork appeared on behalf of the Commissioner. An oral hearing took place on Wednesday, 24th April 1996. Present thereat in addition to Mr. O'Connell and Mr. Walsh were Mr. Robert Hanan on behalf of Comhlamh and Mr. Terry Dineen on behalf of the Commissioner. Both oral and documentary evidence was given before us. The oral evidence was given by Mr. Hanan who is Secretary of the Association and who is also a Director of APSO.

The only "valuation evidence" was given by Mr. Dineen on behalf of the Commissioner. From a documentary point of view there was submitted to us and we received into evidence the Commissioner's précis and a statement of the evidence which Mr. Hanan had prepared for the purpose of the hearing. We also received into evidence the Memorandum & Articles of Association of Comhlamh, the Annual Reports for the years 1993/94 and 1994/95, its Accounts for the year ending 31st March 1995 and also in order to demonstrate what type of administrative work it carries out, a summary of its daily activities for the week-ending 29th March 1996.

**Facts as Found by the Tribunal:**

Comhlamh, the Irish Association of Returned Development Workers is a charitable organisation and is registered as such with the Revenue Commissioners. It is a non-profit making organisation and it has two offices, one in Cork which is the subject matter of this appeal and one in Dublin. A similar issue has arisen with regard to its premises in Dublin. Again at revision and first appeal stage the Commissioner has refused to distinguish the hereditament on the basis of the Association's charitable status but we understand that an appeal is presently pending before this Tribunal in respect of that property.

The Memorandum of Association of Comhlamh indicates that its principal objective is:-

'to enable persons who have rendered services overseas in developing countries upon

their return to Ireland to bring to bear their own particular experience in order to further international development co-operation.'

There are several subsidiary objectives all of which are specified in the Memorandum. These include educational objects, for example, promoting adult and teacher education on issues of international development: charitable objects for example promoting the relief of poverty in the Third World and thirdly it has as an objective the support of the volunteers who have gone from Ireland on overseas assignments but who have on their return indicated a desire to reintegrate into our society.

In practice Comhlamh by their meetings, planning sessions, night courses, public lectures and by several other methods of communication, provide information, help and assistance to students and teachers and all others who are interested, on a variety of issues, the following of which are only examples:-

On issues of international development and co-operation, on issues of poverty and human rights and, on issues of awareness, perceptions, education and attitudes. It promotes a deeper understanding of what it believes are the true Third World issues and it educates and teaches others to a high level of skill which it feels is required in order to further those aims and in order to further international aims in general.

Secondly, and this is a significant part of both its written objectives and its practical work it offers mutual support and mutual assistance to Returned Development Workers (RDW) who wish to re-establish their positions in Ireland, positions which may have been interfered with or changed or have otherwise been diminished in importance by virtue of their previous assignments overseas. It offers counselling to such persons and indeed specifically in evidence Mr. Hanan indicated that such counselling has covered areas such as post traumatic stress disorder.

On pages 13 and 14 of the Annual Report for 1993/94 Comhlamh gives the results of a questionnaire which previously had been submitted to its members. The results of that

questionnaire insofar as they are relevant to this appeal indicates, that about 50% of the respondents felt that Comhlamh was meeting the present needs of the Returned Development Workers but significantly 25% felt that not enough was being done for a variety of reasons for those persons. Accordingly, whilst not in any way distracting from the other activities of the Association it is clear and it is accepted by this Tribunal that a major part of its responsibility is to deal in a number of ways with the Returned Development Workers. In addition, Comhlamh collects materials in the form of books and other documentary data for Third World countries but it has no function per se on overseas funding. Largely those who are members of Comhlamh and who go on overseas assignments have a contract with the Agency for Personal Services Overseas. Some such persons receive only minimum allowances whilst others receive fairly substantial payments. The main source of funding for Comhlamh is from APSO, a subsidiary source of funding is from other educational funding bodies e.g. The National Committee for Development Education and finally it also receives some support from charitable institutions such as Concern, Trocaire and Goal. It employs one full time member of staff in Cork who is assisted by a trainee from Fás. The above is a summary of its activities. That summary is sufficient for the purposes of determining the legal issue before the Tribunal and accordingly, it is unnecessary to go into further detail about its constitution, its source of fundings and or indeed the many other well recognised and important areas in which this organisation is involved.

### **The Law:**

As this is a legal issue it is necessary for a moment to refer to certain provisions of the Valuation Code. Apart from specific exceptions which are to be found in identifiable Acts, it has been held by our courts for the past seventy or eighty years or more that in order to gain exemption from rating, a rated occupier has to come within one of the provisions of *Sec. 63 of the Poor Relief (Ireland) Act 1838*. That was decided by the former Supreme Court in the case of *O'Neill v. Commissioner of Valuation 1914 2IR 447*, by *McGahan & Ryan v. Commissioner of Valuation 1934 IR 736*, and more recently by the Supreme Court in the judgment of Mr. Justice Kingsmill Moore in the *Barrington Hospital case 1957 IR 299*. The position is somewhat different in England in that the House of Lords held in the case of *Governors of Campbell College, Belfast v. Commissioner of Valuation 1964 2ER 705* that

the statutory basis for exemption in Northern Ireland was *Sec. 2 of the 1854 Act*. In this jurisdiction however, our Supreme Court in the cases above mentioned have and have always taken the view that *Sec. 2 of the 1854 Act* was procedural in nature only and did not in any substantive way add to vary or change the provisions of *Sec. 63 of 1838 Act*. Accordingly, and as is obvious, this Tribunal is bound by the Irish law above mentioned and therefore, if Comhlamh is to obtain the exemption in this case it must by way of evidence satisfy the Tribunal that it falls within one of the exceptions as contained in *Sec. 63*. Before I deal with that, I wish to mention the *Scientific Societies Act of 1843*. That Act contains a statutory exemption from poor rate in favour of a society which is established exclusively for the purposes of science, literature and fine arts, including music, and is supported wholly by voluntary contributions, provided that no profits could be distributed to its members and provided that there was in existence a certificate from the Registrar of Friendly Societies confirming that the organisation in question was in fact a registered society under that Act. Whether or not it would have been possible for this organisation to obtain such a certificate or come within the provisions of *Sections 1 to 6 of 1843 Act*, is not for this Tribunal to say. There being no certificate produced and none in existence, it is clear that no relief can be obtained under that Act.

*Sec. 63 of the 1838 Act* insofar as it is relevant provides:-

"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, 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"

During the course of this case and in submissions, Mr. O'Connell on behalf of Comhlamh relied exclusively on that part of the quotation just given namely, that these rooms were used

exclusively for charitable purposes. He made no submission and did not rely on any other exemptions as contained in Sec. 63. There was no suggestion and there is no question of this Association obtaining a private profit or making a private use of the rooms in question, that is, in the sense of those phrases as contained in Sec. 63. Accordingly, that proviso does not apply.

The meaning of charitable purposes has been discussed and considered by our courts in a number of decisions. Originally, our courts followed the English decision of *Pemsel 1891 AC 531*. That was a case in which the question of charitable status arose for the purposes of the Income Tax Acts and it was so decided that in English law at least, charitable purposes could be classified into four principal divisions.

- 1) the relief of property
- 2) the advancement of education
- 3) the advancement of religion and
- 4) other purposes beneficial to the community not falling under any of the preceding heads.

In Ireland, at least since 1957, we have taken a more restrictive view of what charitable purposes mean and in particular the Supreme Court has decided in Barrington's Case that for the purposes of the Valuation Code the categories as enunciated in the Pemsel's decision did not necessarily apply to this jurisdiction.

**Determination:**

Accordingly, we cannot give the same liberal and broad meaning of charitable purposes as the English authorities appear to. Bearing in mind *Sec. 16 of the 1852 Act* the net question of law for this Tribunal is whether or not these rooms have been used exclusively for charitable purposes. It is our opinion that such rooms are not so used exclusively for charitable purposes within the definition of that phrase. As we have stated previously, in practice the association provides amongst its activities this mutual support for its member who have previously been on overseas work or duties or assignments.

This is more akin to a support function and a support activity than one that can be correctly or properly categorised as charitable. It is perhaps similar, though undoubtedly different from the subject matter of a decision which the Tribunal gave sometime previously in the case of the **Catholic Marriage Advisory Council v. Commissioner of Valuation (VA95/5/022)**. In that case the appellant sought to be distinguished on the basis of its charitable status. The Tribunal considered that since one of its activities was to promote a particular view of marriage and of religion, that the same could not therefore be said to be purely charitable. Accordingly, the premises occupied by it could not be said to be used purely for charitable purposes in the definition of what that means.

There is no doubt in our mind that this Association provides invaluable services and that the attention it gives to international concerns in the Third World are matters which should be encouraged by all concerned. However, insofar as we interpret the Valuation Code, we have to confine ourselves to what the law is. In our view therefore because of the activities lastly described we are not in a position to grant exemption of these premises on a basis that they are being used exclusively for charitable purposes. Accordingly, the Tribunal refuses the application of Comhlamh.