

Appeal No. VA96/2/036

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

The Waldorf Education Trust Limited

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: School at Map Ref: 28, Maxwell Road, Ward: Rathmines West D, County Borough of Dublin

Exemption - Educational and public purposes

B E F O R E

Mary Devins Solicitor

Deputy Chairman

Fred Devlin FRICS.ACI.Arb

Deputy Chairman

Rita Tynan Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF MARCH, 1997

By Notice of Appeal dated the 18th day of April 1996 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £36 on the above described hereditament.

The grounds of appeal were set out in a letter to the Commissioner of Valuation dated the 10th day of May 1995 and attached to the Notice of Appeal. The grounds of appeal in summary were:-

1. We confirm that the school is used as a primary or national school.
2. The school is funded by voluntary contributions not by fees - it accepts children of parents of all sociological backgrounds without regard to the ability to pay. At present there are quite a significant number of families who are on low income.
3. The school is open to all children who apply.

4. The school is effectively an ordinary national school and is not a private school. The school has applied to the Dept. of Education for State funding out this has been turned down. A further application is being submitted.
5. The school is run on an extremely low budget, is non profit making and the sole object of the school are for educational purposes."

The Property:

The property comprises of a two storey over garden level brick fronted building. It was purchased by the appellant in September 1989 at a cost of £85,000. There are four classrooms on the ground and first floors. The garden level comprises office, kitchen and stores. The school is used as a primary school funded by voluntary contributions. There is no state funding.

Valuation History:

The property was valued as a school, apartment and small garden in 1989 - RV £35. In 1995 it was listed for revision by the occupier with a request for exemption. No change was made at revision and the property was left rateable. At First Appeal 1995 the description was amended to school but no exemption was granted.

Written Submissions:

A written submission was received on the 5th day of November 1996 from Mr. Pól Ó'Murchú, BCL (NUI), Aturnae on behalf of the appellant.

In his written submission, Mr. Ó'Murchú submitted that the issue before the Tribunal was exemption from rates on the basis of use for charitable purposes. He said that exemption was sought on the basis of certification by the Revenue Commissioners, that the appellant was regarded as a charity for tax purposes. Mr. Ó'Murchú said that the background and objects of the Trust indicate the non-profit making nature of the activities. He said that the Constitutional position of and support for such education as is provided by the Trust was declared in Article 42(2) and 42(3) of the Constitution of Ireland. He submitted that the Trust was entitled to exemption and any activity carried on by it in the building was so inextricably linked with its main objectives as to be part of the charitable purposes for which it exists. In support of his submission, he quoted Mr. Justice Kingsmill-Moore in the Barrington's Hospital case and said that the words "used exclusively for charitable purposes" does not mean that such purposes must be of an entirely gratuitous nature or must be confined to the poor. He also said that the Constitutional provisions in Article 42 supported the right of

parents to provide a lawful alternative to state education. He also made reference to the appeal decision **VA88/130 - National Association of Widows in Ireland v. Commissioner of Valuation**. Mr. Ó'Murchú rejected the term "private school" being applied to the Rudolf Steiner School. He said that funding had been sought from the Minister for Education but this had been refused in the Spring of 1995. He said that same was still being sought by the Trust. A copy of the Annual Report and Accounts for 1995 were also supplied to the Tribunal.

A written submission was received on the 4th day of November 1996 from Mr. Liam Cahill, BA, Valuer with 15 years experience in the Valuation Office on behalf of the respondent.

In his written submission he described the premises and gave its valuation history as set out above. Mr. Cahill submitted that the property was not entitled to exemption under the provisions of *Section 63 of the Poor Relief (Ireland) Act 1838* and *Section 2 of the Valuation (Ireland) Act 1854*. He said that the main object for which the company is established is:

"to advance the education of children in accordance with the principles and methods enunciated by the late Dr. Rudolf Steiner and for the purpose to set up, maintain and to carry on schools, colleges or establishments or otherwise provide instruction".

Oral Hearing:

At the oral hearing which took place on the 6th November, 1996 Mr. Brian Gillespie, BL instructed by Mr. Pól Ó'Murchú, Aturnae appeared on behalf of the appellant. The respondent was represented by Eamonn Marray, BL instructed by the Chief State Solicitor.

Also present were Ms. Mary Murray, Trustee/Director of the appellant company and Mr. Liam Cahill of the Valuation Office.

Ms. Murray gave evidence that the owner of the subject property was the Waldorf Education Trust and that the occupier was the Dublin Rudolf Steiner School Limited. She confirmed that the companies were connected and that no rent passed.

Ms. Murray explained the ideals and philosophy of Steiner Waldorf Education which are in accordance with the principles of the late Dr. Rudolf Steiner.

She said in evidence that for the current year approximately 40% of the pupils paid full tuition fees with the remaining 60% being subsidised to varying degrees.

Mr. Gillespie submitted that the objectives of the rateable occupier were essentially charitable and that all activities carried on in the property were inextricably linked to those charitable aims.

He referred the Tribunal to the provisions of *Section 63 of the Poor Relief (Ireland) Act 1838* and submitted that the Rudolf Steiner School is a Charity School and that the existence of a number of fee paying pupils does not detract from the charitable nature in the same way that the presence of a limited number of paying patients did not prevent Barrington's Hospital from being charitable in nature.

Mr. Gillespie referred the Tribunal to its own decision in **VA88/130 - National Association of Widows in Ireland v. Commissioner of Valuation** and contended that the facts in that case were directly comparable to those of the subject. He said that the school is non-profit making and in fact is currently run at a deficit and no private profit is directly derived therefrom.

Finally, Mr. Gillespie referred to the provisions of Articles 42 and 43 of the Constitution which, he said, support the existence of schools such as the subject by their confirmation of the family as the natural educator of the child and of the rights of parents to provide that education "in their houses or in private schools or in schools recognised or established by the State".

Mr. Marray submitted that the subject hereditament being educational in nature did not meet the necessary criteria for exemption in that it could not be said to have as its main purpose the education of the poor.

In support of this argument Mr. Marray referred (*inter alia*) to Mr. Justice Keane's "Law of Local Government in the Republic of Ireland"; to the judgement of Mr. Justice Gannon in **VA88/0/100 - St. Macartan's Diocesans Trust v. Commissioner of Valuation** and to the decision of the Tribunal in **VA90/3/079 - County Galway VEC v. Commissioner of Valuation**. He submitted that the Barrington's Hospital case should be distinguished in that the number of paying patients in that case was a minority whereas in the instant case the vast majority of pupils paid fees of some description.

Determination:

The Tribunal notes that the appellant company is in fact the owner of the subject property and that the rateable occupier is a separate entity namely the Dublin Rudolf Steiner School Limited.

It considers therefore that the evidence given in relation to the appellant company is, strictly speaking, irrelevant and proposes to refer only to the occupier.

The question for the Tribunal to decide is whether the subject hereditament ought to be distinguished as being of a public nature or used for charitable purposes pursuant to *Section 63 of the Poor Relief (Ireland) Act 1838* and *Section 2 of the Valuation (Ireland) Act 1854*.

It is common case that there is as yet no State involvement in the subject property and therefore, in spite of the Constitutional aspirations of Articles 42 and 43, it cannot be said to be "dedicated to or used for public purposes" in accordance with *Section 63 of the 1838 Act*.

What remains to be decided therefore is whether the subject hereditament should benefit from exemption on the grounds of charitable purposes.

The Tribunal is bound by the decisions of superior courts in relation to the interpretation of the proviso to *Section 63 of the Poor Relief (Ireland) Act 1838* and it is satisfied that *Section 2 of the Valuation (Ireland) Act 1854* should be read in conjunction with *Section 63 of the 1838 Act*.

It is bound, too, by the decision of the Supreme Court in the *Barrington's Hospital* case which established that for education to be considered exempt it must be limited to education of the poor and the poor exclusively. Mr. Justice Kingsmill-Moore in ***Barrington's Hospital v. Commissioner of Valuation*** stated at page 333: "apart from specific exceptions to be found in other statutes (such as Marsh's Library, Armagh Observatory and buildings belonging to certain societies, instituted for purposes of science, literature or fine arts) the grounds for exemption from rates must be found in the proviso to *Section 63 of the Act of 1838*. Mr. Justice O'Dalaigh in the same case stated at p.342: "I accept that the charitable purposes referred to in Section 63 should in regard to education be read as limited to the education of the poor".

The Tribunal finds that the subject hereditament does not meet the criteria for exemption. The evidence has been that most of the pupils in the school do pay at least some fees and it is noteworthy that the objects of the occupier company do not refer to the education only of the poor or disadvantaged.

The Tribunal has not had to decide, therefore whether any private profit or use is derived from the subject and does not propose to deal with this issue.

The Tribunal, therefore, while recognising the commitment and sincerely held beliefs and ideals of the Waldorf Steiner Educationalists, must have regard to Statute and the Superior Court's interpretation thereof and in the circumstances affirms the decision of the respondent.